

THE UNIVERSITY OF HULL

**POLICE POWERS, LEGAL RIGHTS AND PRE-TRIAL
PROCEDURES IN SAUDI ARABIA: A COMPARISON
WITH ENGLAND AND WALES**

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By

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Abstract

The exercise of police powers is subject to rules and guidelines, and the extent of police powers has occasioned considerable controversy since the inception of the 'new police'. On the one hand, the police clearly need powers to stop people on the street if they are suspected of a crime, to enter people's houses if they suspect that they are hiding stolen goods or firearms and to arrest people they suspect of a crime. They need to be able to interview suspects in the police station and may have to hold suspects in cells. On the other hand, individual citizens need to be able to carry on with their everyday lives without risking being stopped on the streets, having their homes ransacked by the police and being arrested and taken to the police station. Suspects must be protected from torture, brutality and the extraction of false confessions. Special protection may be afforded to vulnerable groups such as the young and mentally ill. Legislation on police powers, therefore, must balance conflicting needs.

Saudi Arabia the Stop, Arrest, Detention and Custody Regulation (SADC) was set up in 1983. The regulation provided powers relating to stop and search, arrest, detention, interviewing, and the investigation of crimes. It seeks to protect suspects from the abuse of such powers by granting to suspects certain rights and protections. In practice, however, the balance between the use of the powers and suspects' rights is different. The police appear to exceed their powers as they provided and the safeguards are ignored.

Therefore, the question is, how do the pre-trial procedures work in practice? No research has been done to examine the pre-trial process in practice in Saudi Arabia.

Data collection for the study was carried out using three methods: questionnaire, observation and documentary data from police files.

In this research variations have been found between the official regulation and actual police practice.

Dedication

I want to express my gratitude to my parents, who struggled through the most difficult times to help me, with thanks for their encouragement and support.

Also I express my gratitude to my wife for her patience and her encouragement.

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In the name of Allah the Most Compassionate and the Most Merciful. I am most grateful to God Almighty for the gifts of health, patience, guidance and protection through the duration of my study.

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INTRODUCTION

- **The Research Problem**
- **The Aims and Objectives of the study**
- **The Research Questions**
- **Significance of the Study**
- **Organisation of the Study**

INTRODUCTION

Introduction

The current legal regime governing police powers and rights of those suspected of crime in Kingdom of Saudi Arabia is contained in Regulation Act 1983. The regulation stated that it would create an appropriate balance between the individual's rights and the community's interest. In defining what powers the police ought to have, the Act sought to regulate the coercive powers exercised by the police. Accordingly, the regulation confers powers on the police, but then seeks to protect suspects from the abuse of such powers by granting to suspects certain rights and protections. The regulation sets out in an extremely detailed manner the circumstances in which the police can exercise their powers, and is supplemented by several articles containing yet further detailed guidance on powers of stop and search, arrest, search of premise and seizure of prosperity, the detention, treatment, and questioning of suspects, identification of suspects, and tape recording of interrogations.

The power of stop and search can be exercised only if the police have reasonable suspicion. The regulation makes it clear that a person's age, colour, style of address, or previous conviction is an insufficient factor to amount to reasonable suspicion. The suspect can be detained for only such time as is reasonable suspicion. A search cannot be carried out without the suspect first being told of the constable's name and police station, and the object of the proposed search.

The use of arrest powers is regulated by the criterion of necessity. The regulation states that arrest can only be justified if one of the following applies:

- the refusal by a suspect to reveal his identity so that summons may be served;
- the need to prevent continued repetition of the offence;
- the need to protect the arrested person or property;

- the need to secure or preserve evidence;
- the possibility that the suspect would fail to appear at court to answer summons.

The regulation balances extended powers of detention for the police with greater safeguards and protections for suspects. First, key decisions are taken away from the arresting and investigating officers and give to the station officer. Secondly, the regulation states that a suspect has the right to have a person informed of his or her arrest and whereabouts at public expense. Thirdly, the regulation grants the suspect the right to free legal advice whilst in custody. Finally, the regulation regulates quite closely the recording of interrogation with the aim of ensuring that the court is provided with an accurate record of what was said by both the police and the suspect during interrogation.

The research problem

It will be apparent to the reader familiar with British policing that the Saudi Regulation Act of 1983 echoes many of PACE adapted in Britain in 1984. However, while the operation of PACE has been subject to extensive critical comment and empirical regards. The same can not said of the operation of police powers in Saudi Arabia. In this context, this thesis seeks to explore the operation of police powers in Saudi Arabia by an explicit comparison to the Police and Criminal Evidence Act 1984 in the UK.

As research in the UK has subsequently shown PACE has had a mixed impact in police practice. Detention is authorized almost automatically and invariably (Phillips and Brown, 1998). The information to suspects about their rights is often given in a ritualistic and meaningless way; this may account for the overwhelming majority of suspects who do not take them up (Morgan, Reiner, and McKenzie 1990). While some recent research has suggested that the right to silence may benefit serious offenders

disproportionately (Buck, Street, and Brown, 2000), relatively few offenders have ever exercised their right of silence, in part or completely (Phillips and Brown, 1998).

Later stages in the detention process are less punctiliously followed than the reception procedures. Custody officers are also less scrupulous about monitoring pre-detention events such as delay between arrest and arrival at police stations (Morgan, Reiner and McKenzie, 1990).

PACE procedures can frequently be side-stepped by securing compliance by suspects with police requests. Such 'consent' is especially important for the stop and search powers, where it is often circumvented (Dixon, Coleman, and Bottomley, 1990; Dixon, 1997).

The provision of 'appropriate adults' and defence solicitors to assist vulnerable suspects like the mentally disordered has been described as inadequate (Evans, 1993; Bean and Nemitz, 1994; Reiner, 2000). In many cases no 'appropriate adult' is called or attends. However, appropriate adults are obtained in most cases involving juveniles (Phillips and Brown, 1998).

The socially discriminatory pattern of use of police powers remains as marked as before. The burden of police powers still falls disproportionately on the young, economically marginal, ethnic minority males, who are the overwhelming majority of those who are arrested and detained (Morgan, Reiner, and McKenzie, 1990; Phillips and Brown, 1998).

If such a picture emerges from Britain, what about in Saudi Arabia? As in Britain, the regulation in Saudi Arabia provides powers relating to stop and search, arrest, detention, interviewing, and the investigation of crimes. It seeks to protect suspects from the abuse of such powers by granting to suspects certain rights and protections. What we do not know is how the law in books is translated by the law in action: how the rhetoric of law

is implemented in practice. Therefore, this study will examine how 'the balance' between police powers and safeguards of the suspects' rights is achieved in practice.

The aims and objectives of the study

The main aim of this study is to examine the police powers for stop-search, arrest, detention, interrogation, and treatment at police station in Saudi Arabia and the rights of the suspects.

The objectives of the study are as follows:

The first objective of the study is concerned with understanding and explaining the underlying principles of the Sharia law and relevant law of England and Wales.

The second objective is to explain how this relates to due process and crime control.

The third objective is to examine the pre-trial procedures and suspects' rights in practice.

The fourth objective is to make a comparison between Saudi Arabia and England and Wales.

The research questions:

The main questions to be investigated, as part of the study objectives, are as follows:

1. To what extent do the procedures governing stop and search provide adequate safeguards to suspects and how does this compare with the UK?
2. To what extent do the procedures governing arrest provide adequate safeguards to suspects and how does this compare with the UK?
3. To what extent do the procedures governing interviewing the suspects provide adequate safeguards to suspects and how does this compare with the UK?

4. To what extent do the procedures governing identification and investigation provide safeguards to suspects and how does this compare with the UK?
5. To what extent are suspects treated at police station in accordance with the law and how does this compare with the UK?
6. To what extent is the legal right to legal advice taken up by suspects?
7. To what extent do suspects exercise their right to silence and how does this compare with the UK?
8. To what extent do vulnerable suspects provided with appropriate adults and how does this compare with the UK?

Significance of the study

Many studies have examined the pre-trial process and researched the police powers and the suspects' rights. Unfortunately, most of these studies have been conducted in European and United States settings. Such developed countries are culturally, economically and politically different from the developing countries like Saudi Arabia, where the present study was carried out. However, in the light of the lack of studies of pre-trial procedures and individual rights, the present study is the first study that examines the police powers and suspects rights in practice in Saudi Arabia.

In addition, the importance of this research lies in the necessity of improving the environment of the human rights in Saudi Arabia in general, including improving the pre-trial procedures, police powers and the treatment of the suspects. Thus, this research is considered important to:

- The Saudi Arabia government, especially the criminal justice agents in recognising the tensions between legal regulation and police practice.

- The Saudi Arabian academic community, in making available in a published form the findings of empirical research on policing in Saudi Arabia
- The citizens of Saudi Arabia, in helping understand the nature of the pre-trial.
- The international community in aiding comparisons between the operations of different criminal justice systems.

The organisation of the study

The material in this thesis is organised into two main parts and nine chapters in all:

Part one: chapter one presents the police power and citizens' rights in context and the policing shapes and practices. Chapter two presents the criminal justice system in Saudi Arabia. This chapter describes the organisation of police, the public prosecution and the court types in Saudi Arabia. Chapter three presents the history of PACE and how it relates to crime control and due process. Chapter four presents pre-trial procedures in Sharia law. This chapter affords the reader a wide understanding of the principles and pre-trial procedures and suspects rights in Sharia law. Chapter five presents the pre-trial regulation in Saudi Arabia and England and Wales (PACE). This chapter affords the reader a broad understanding of the law in books in both Saudi Arabia and PACE.

Part two: chapter six examines PACE in practice. This chapter reviews the literature on the operation of PACE. The purpose of the literature review was to determine the importance of the pre-trial procedures and suspects rights examination and to provide foundation for the comparison between Saudi Arabia and England and Wales. Chapter seven explains the research questions and methodological framework of the study. This study was conducted, based on questionnaires with 120 police patrol officers and with same number of police investigation officers in Riyadh. Observation for 100 cases at police stations was conducted. Documentary data was gathered from police cases files.

In chapter eight the data obtained from the survey of police officers, observation, and documentary data are analysed. This chapter presents a detailed analysis of police powers and suspects rights in Saudi Arabia and comparison with two studies in the UK to show the differences and the similarities. Finally, in chapter nine, conclusions are presented a discussion for the finding of the research.

CHAPTER ONE: POLICE POWERS AND CITIZENS RIGHTS IN CONTEXT: WHAT SHAPES POLICING PRACTICE?

- **Introduction**
- **The rule of law**
- **Police governance and accountability**
- **Community accountability**
- **Community policing**
- **Police culture**
- **Rules and police work**
- **Discretion in police work**
- **Police practice**
- **Conclusion**

POLICE POWERS AND CITIZENS RIGHTS IN CONTEXT: WHAT SHAPES POLICING PRACTICE?

This first chapter examines the law in theory and law in action. First, it will examine police powers, the rules of law and the mechanisms of accountability. Secondly, police culture, rules of police work, police discretion, and police practice will be examined.

Introduction

Police may be defined as ‘people sanctioned by the state with powers to enforce the law and keep the peace’ and policing as ‘the types of activities they perform’. However, as Riener (2000) points out, there is a difference between these definitions in that ‘police’ refers to a particular kind of social institution, while ‘policing’ implies a set of processes with specific social functions. Police are not found in every society, and police organisation and personnel can have a variety of shifting forms. He also, argues that policing is arguably a necessity in any social order, which may be carried out by a number of different processes and institutional arrangements. The state-organised specialist (police) organisation of the modern kind is only one example of policing.

Policing, a term we might apply to the process of preventing and detecting crime and maintaining order, is an activity that might be engaged in by any number of agencies or individuals. On the one hand, it is widely recognised that members of the public, especially victims, connect with policing in so far as they report crimes to the authorities and help identify the perpetrators. On the other hand the private sector and agencies like Neighbourhood Watch, Guardian Angels, and Probation officers enforcing drugs-testing orders cooperate in policing societies.

This thesis investigates policing practice (police powers and suspects’ rights) in Saudi Arabia and England and Wales. The current legal regime governing police powers and rights of those suspected of crime in the Kingdom of Saudi Arabia is contained in the Regulation Act 1983. The regulation stated that it would create an appropriate balance

between the individual's rights and the community's interest. In defining what powers the police ought to have, the Act sought to regulate the coercive powers exercised by the police. Accordingly, the regulation confers powers on the police, but then seeks to protect suspects from the abuse of such powers by granting to suspects certain rights and protections. The regulation sets out in an extremely detailed manner the circumstances in which the police can exercise their powers, and is supplemented by several articles containing yet further detailed guidance on powers of stop-and-search, arrest, search of premises and seizure of property, the detention, treatment, and questioning of suspects, identification of suspects, and tape recording of interrogations.

The power of stop and search can be exercised only if the police have reasonable suspicion. The regulation makes it clear that a person's age, colour, style of address, or previous conviction are not sufficient factors to amount to reasonable suspicion. The suspect can be detained for a reasonable time.

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regulation states that a suspect has the right to have a person informed at public expense of his or her arrest and whereabouts. Thirdly, the regulation grants the suspect the right to free legal advice whilst in custody. Finally, the regulation regulates quite closely the recording of interrogation with the aim of ensuring that the court is provided with an accurate record of what was said by both the police and the suspect during interrogation.

It will be apparent to the reader familiar with British policing that the Saudi Regulation Act of 1983 echoes many of the provisions of the PACE adopted in Britain in 1984. However, while the operation of PACE has been subject to extensive critical comment and empirical evaluation, the same cannot be said of the operation of police powers in Saudi Arabia. In this context, this thesis seeks to explore the operation of police powers in Saudi Arabia by an explicit comparison to the Police and Criminal Evidence Act 1984 in the UK.

The rule of law

The matter of police violations of legal procedures in the course of dealing with offences became actually politicized in the 1970s. On the one hand groups like the National Council for Civil Liberties publicised evidence of widespread police malpractice, while on the other the police began to lobby for greater powers to aid the 'war against crime'. This conflict resulted in the establishment in 1979 of the Royal Commission on Criminal Procedures (RCCP), which reported in 1981. After much argument and modification, the RCCP Report eventually resulted in the Police and Criminal Evidence Act 1984 (PACE). This purported to provide a balanced codification of police powers and safeguards over their exercise, synthesizing the concerns of the 'law and order' and the civil liberties lobbies, although there has been extensive debate about whether it has succeeded (McConville, Sanders and Leng, 1991; Reiner, 2000).

The Police and Criminal Evidence Act 1984 (PACE) provides for the creation of Codes of Practice to deal with the minutiae of implementation. These Codes cover the following areas:

The exercise by the police officers of statutory powers of stop and search (Code A).

The searching of premises by police officers and the seizure of property found by police officers on persons or premises (Code B).

The detention, treatment and questioning of persons by police officers (Code C).

The identification of persons by police officers (Code D).

The tape recording of police interviews (Code E).

In general, the rule of law is intended to insure that every one is treated equally and fairly in accordance with the law. And we require a theory of police work that incorporates a number of these theoretical strands together with an understanding of the mechanisms of governance of the police and process of policing form.

Police Governance and accountability

Morgan and Newburn (1997) and Reiner (2000a) suggest that the British public police cannot work under a cloak of secrecy. The very public nature of police failings – in terms of bad practice, corruption, miscarriages of justice, and racism – has contributed to undermining public confidence and legitimacy in the police. Furthermore, the insular nature of the organizational culture, the discretion of front-line officers, the breadth of the police role, and the invisibility of most police decisions (McLaughlin and Murji 2001) all render accountability very problematic indeed. Despite some major legislative changes to the mechanisms of accountability in the last forty years, the public police in Britain have not exhibited either the openness or transparency required to scrutinize their work properly; they have frequently failed to deal with wrong-doers (as the culture discourages officers from speaking out when they witness unprofessional, racist, or corrupt practice: Punch 1985; HMIC 1997,9); and

have not engaged sufficiently in policing *with* people, to restore the confidence and the trust of many sections of the public (particularly the young, the poor, and minority groups) (Macpherson 1999); while accountability is vital for controlling police powers and ensuring the effectiveness, efficiency, and fairness of policing (McLaughlin 1991, 1993; Morgan 1989; Reiner 2000a; Smith 2001). Furthermore, the plethora of activities taking place on the transnational stage and the plurality of public, semi-public, and private policing provision, render public scrutiny and democratic accountability very difficult indeed (Loader 1999: 333).

The dimensions of police accountability

In Britain, the history of police accountability has some similarities with other issues we discuss in this chapter, in that the basic problems which arise from police accountability have persevered despite important governmental changes over the last four decades, and none have attained the kind of transparency and accountability that are attractive. This is not an easy task. Certainly, the contradictions and complexities which beset police work present considerable challenges in determining *how* and to *whom* the police should be accountable. Conservative legal theorists argue that the police should be 'answerable to the law and the law alone' (Lord Denning 1968, cited by Jones and Newburn 1997: 13). This notion, enshrined in the doctrine of constabulary independence, reifies the law to a position where it 'stands above the narrowly political and partisan interests of a community and constitutes its ongoing collective public will' (Kleinig 1996: 213).

Despite the frequency with which Lord Denning's judgment is quoted, there are significant problems with it (Lustgarten 1986; Jones and Newburn 1997: 3-4), not least because it leaves the police with options about *which laws* to uphold, against *whom*, and by *what means* (Brogden *et al.* 1988: 161). Many observers argue that these decisions are *political* and that, as a matter of principle, they should be made by locally elected

representatives not autonomous police officers (Greater London Council 1983; Lea and Young 1984; Kinsey, Lea, and Young 1986). Not surprisingly, therefore, legal accountability has been the subject of sustained criticism (Scarman 1981; McLaughlin 1994; Bowling 1999: 64-71; Macpherson 1999); and as Lustgarten (1986) argues, it is not whether the police are free to make decisions which is at issue, but the need to make them accountable for the decisions they take. There are also some good reasons why the desire for political control should be resisted. For example, politicians, bound by electoral cycles, often make short-term, ill-advised decisions, frequently in response to media pressure (see, for example, Koch 1998; Foster 1999: 319-20).

From 1964 a 'tripartite structure', comprising the Chief Constable, the Home Office, and the Police Authority (with locally elected councillors and magistrates (Lustgarten 1986; Reiner 2000a: 188-98)), was the key accountability mechanism for England and Wales. Reiner (2000a: 189) characterized the relationship between the Chief Constable and the Police Authority in the 1964 tripartite arrangements as one where 'The police authorities aid with central government but did not call any tunes'. Conflicting power dynamics between the Police Authority and the Chief Constable, and an unwillingness on the part of those without expert information to make decisions about ready matters, may explain why, despite later changes with the introduction of the Police and Magistrates' Courts Act 1994 (which reduced the numbers of councillors, but added 'independent' members and made police authorities responsible for the efficiency and effectiveness of forces), power became 'concentrated further in the hands of Chief Constables' (Jones and Newburn 1996: 205; Savage *et al.* 2000; Loveday 1996).

In recent years there has been a shift away from 'political' accountability to 'managerial' accountability (Jones and Newburn 1997; Savage *et al.* 2000). The Home Office, influenced by the Audit Commission, has been at the heart of these changes, increasing their influence by setting national policing objectives and key performance

targets in a range of policing activities, as well as standardizing recruitment, equipment, and training (Savage *et al.* *ibid.*: 26-30). These changes have been widely interpreted as a process of centralization under the guise of administrative efficiency, effectiveness, and 'value for money' (*ibid.*: 30-7). Although managerial accountability appears to be a politically neutral and 'technical exercise' intended to measure performance (Jones and Newburn 1997: 15), it represents an important shift where public participation is seen in terms of consumers purchasing services, and responsiveness to elected bodies, direct participation, and equity have been de-emphasized.

The construction of national agencies that work outside the tripartite understanding (Johnston 2000a: 90-106; Reiner 2000a: 190-198) – for example, the National Crime Intelligence Service and the National Crime Squad – further constrains local decision-making processes (Savage *et al.* 2000: 205) and, alongside other changes, is seen as an indicator of 'creeping nationalisation' (Johnston 2000a). The increasingly 'mixed economy' of police work and the blurring of boundaries between private and public provision create new problems for the democratic accountability of the police. Loader (1999: 337), for example, advocates the creation of 'policing commissions' to formulate policies and coordinate service delivery across the policing network, and to bring to democratic account the public, municipal, commercial and voluntary agencies that comprise it'.

Community Accountability

The official mechanisms for police accountability described above have been widely criticized for not reflecting the demographic and social make-up of the communities they serve, and for adopting 'strongly pro-police orientations' (Reiner, 2000). The resulting 'democratic deficit' has long been recognized, as have its implications for policing diverse societies and the notion of 'policing by consent' (Scarman 1981; Patten 1999: 22-39). Since the 1980s, attempts have been made to increase the responsiveness

of the police to ethnic minority communities, young people, and other socially excluded groups. However, the 'Police Community Consultative Groups' (PCCGs) recommended by Scarman are widely viewed by police and public alike as ineffective, unrepresentative, and as having neither 'the information nor independence to critically evaluate police proposals' (Loveday 2000: 218; Morgan 1989). Those who have attempted to use them as a vehicle for change have found their participation to be of marginal importance to the principal areas of police activity' (Commission for Racial Equality 1991: 30).

The 1998 Crime and Disorder Act requires local authorities and the police to consult with the public, including 'hard to reach' groups (see Jones and Newburn 1998, 2001; Phillips, forthcoming), and increasingly police authorities and other local bodies are using a broad range of new mechanisms and methods for such consultation. Although consultation is important if done well (which it often is not), it is not the same as accountability (Bridges 1982; Bayley and Shearing 1996: 91), and the deficit in legal and political accountability is unlikely to be redressed by the creation of new systems of 'consultation' (see Newburn and Jones 2002b).

Community Policing

Successful policing needs the co-operation and support of the community, and as has been seen, changes in policing and in the nature of communities have led to what was seen as a decline in police-community relations in some areas. This has led to the increase of a number of schemes described, to some extent loosely, as community policing, which include both the more familiar policing tasks of patrolling and investigating crime, and strategies aimed at crime prevention and reducing the fear of crime. Schemes often involve the police working with local authorities, businesses and voluntary organizations.

In the UK community policing was pioneered by Chief Constable John Alderson of the Devon and Cornwall force, who argued that community policing would exist in its purest form where all elements in the community, official and unofficial, would conceive of the common good and combine to produce a social climate and an environment conducive to good order and the happiness of all those living within it. In Alderson's (1978) account the community constable is seen as a 'social leader' working with the community and the emphasis is firmly placed on preventive rather than reactive policing. In theory, community policing is based on the idea that the police should consult and seek co-operation with the public and in 'general notions of creating a tranquil and safe environment' (Bennett 1994b: 6). Many benefits are claimed for community policing. In addition to the obvious benefit of improving police relations with the community, it can also add to the effectiveness of the police in relation to law enforcement. Thus it is argued that if the community have more confidence in the police, they may be more likely to come forward with information and co-operation.

In practice, Bennett (1994a) found that community policing encompasses a wide variety of different schemes and he identified five models or styles. First, many plans involve area-based policing, known variously as neighbourhood, zonal, team or sector policing. This involves a small team of managers, supervisors and officers being allocated to a local area. Sector policing was introduced in the Metropolitan Police and has been adopted by many other forces – Bennett cites a 1990 survey which found that more than one-quarter of all forces worked some form of division policing. These generally involve assigning community constables to small areas on a semi-permanent basis. In the Metropolitan Police Area, teams of officers under an inspector are responsible for a small community area, or sector. This inspector, according to the Commissioner's Annual Report for 1991/2 will be responsible for ensuring that the policing arrangements are adequate and effective. The Senior Inspector, in consultation

with the local community, will determine the style of policing for the sector, and set its priorities. Over a period of time the officers will come to identify more closely with that community and as a result will be more responsive to its needs. They will feel greater ownership of the community's problems, and will help to address underlying causes, rather than merely responding to the symptoms (Metropolitan Police Commissioner 1992).

The second model of community policing is a move towards a multi-agency approach, in which the police work in company with local authorities and voluntary agencies. These schemes may be centred on law enforcement by, for example, targeting serious crimes, or may be more concerned with crime prevention or victim support. In an example of community policing in the King's Cross area of London the police and local authorities developed corresponding ranges of environmental and policing schemes to decrease prostitution and drug dealing. Local authority departments cleaned the streets, improved lighting and closed off places where drug dealers and prostitutes operated. High-profile policing, including videos of drug dealers carrying out their trade, led to an increase in convictions. It was claimed that drug dealing was reduced by two-thirds (*The Guardian*, 16 February 1994). Another project in south London targeted a high rate of street robbery. In an area where there had been poor relationships between the police and the community a range of strategies was developed involving the police, the local authority, schools and community consultative groups. Safe routes were created and video cameras installed on selected streets; school campaigns against bullying and carrying knives were launched and the Department of the Environment funded a crime shop which offered help and advice on a local estate. Summer projects aimed to keep young people involved in sport. As a result it was claimed that robbery fell by 38 per cent (*The Guardian*, 4 April 1994).

A major focus of these schemes is crime prevention, the focus of Bennett's third theme. Community crime prevention partnerships include neighbourhood watch schemes. Bennett's fourth model identifies schemes which involve police contact with the public. This may be through foot patrols or setting up shops on estates and high streets away from the police station. It may also involve the police knocking on doors to contact the public directly. Fifthly, community policing refers to the consultation mechanisms outlined above and the introduction of lay visitors to police stations. Despite the many potential benefits of community policing, it has not proved easy to implement. Full implementation would, argue many, involve a total reorganization of police forces in which prevention and service roles take precedence over law enforcement and public order roles. As has been seen, however, the law enforcement role is often prioritized and seen within police culture as real police work. Some have discerned a tendency for community policing functions to be 'bolted on' to existing organisations and seen as an addition to them, rather than their main purpose (Bennett 1994a). Attempts to change styles of policing may encounter resistance from officers on the ground and it has been argued that they cannot be effective if they do not carry the support of these officers (Fielding 1988). In addition, given the vast number of tasks which the police are expected to perform, there may simply not be enough officers to allocate to beats on a semi-permanent basis. In times of emergency they may be called off the beat to deal with football disturbances, public order incidents or other duties. This means that the community cannot rely on consistency of cover. In addition, community constables spend much time on administrative duties and in the police station, and relatively small amounts of time on 'community contacts' (Bennett and Lupton 1992). Moreover, in organisations where community policing has a low status, officers may be keen to move on from such roles, meaning that few gather sufficient experience. Community policing has also been found to be more successful in smaller,

suburban middle-class communities than in inner city areas where the greatest problems have occurred (Fielding *et al* 1989).

Irving (1989) found no change in public attitudes or rates of victimization in his study on the impact of community policing. The reasons for the limited success of these schemes may be that they did not fit well with other organisational priorities and faced resistance from street-level officers. Some positive results have been associated with foot patrols – Bennett, for example, found that a scheme involving the police seeking direct contact with the public had little effect on crime or reporting rates but did lead to substantial improvement in public satisfaction with the police (Bennett 1991). Morgan and Newburn (1997) agree that results should not, however, be taken to indicate that all schemes are unproductive and there are examples of highly committed community officers. Some methods may have little impact on crime or victimisation rates but reduce people's fear of crime. Some, on the other hand, may have an instant achievement which is difficult to sustain over time as interest wanes. The limited evidence of success to date, however, raises important questions about the role of the police – to what extent should they be fostering community relations or focusing on law enforcement and public order? Community policing, while popular with the public, may conflict with stresses to give main concern to other areas of police work which produce quantifiable results. Community-based plans may not be seen as the most well-organized use of police resources

Police culture

Police culture has been used to explain and condemn a broad spectrum of policing practice (Waddington, 1999). The regulations which affect how the police behave in any particular incident or situation form part of what has been called the occupational culture of policing. Many occupations have associated cultures, within which members use a special language, and share a similar view of the world and their occupation.

Anyone starting a job very quickly learns the distinction between how things should be done and how they really are done. These informal rules are learnt during what sociologists call occupational socialization where a recruit learns the norms and values associated with the occupation. The expectations associated with the job and what constitutes success are as much part of such a culture as are attitudes about the role of the occupation. This is particularly the case where the occupation faces hostility or misunderstanding from the public – as may be the case with the police. In this case the ‘canteen culture’ may have a justifying role, justifying the job that members do.

In some occupations this culture is stronger than others – particularly where work spreads into other aspects of life and leisure. Policing is not a nine-to-five job from which officers can switch off when they leave the station. It makes heavy emotional demands on officers, involves high levels of stress and is a vocation as well as a job. A key aspect of policing is that it involves danger, and on the beat the police face the ever-present threat of actual physical harm. Violence against police officers has increased in recent years. The Annual Report of the Chief Inspector of Constabulary in 1995 gave figures showing that 15,141 officers had been assaulted in 1994/95. Trefor Morris, the Chief Inspector, commented, ‘The deaths of Sergeant Derek Robertson and Constable Philip Walters brings to 10 the number of polic officers in England and Wales murdered since 1990 in the course of their duty’ (HM Chief Inspector of Constabulary, *Annual Report 1995*: 51). Police officers therefore need to be able to rely on each other, often in life-threatening situations. This makes for closer relationships between officers and a stronger culture than in many jobs. The police must display authority in order to handle some situations, where large numbers of people are involved. Police can however only ‘handle’ such situations if the public respect their authority. This may affect decisions about suspects to the extent that those who appear to challenge public authority may be more likely to be stopped, arrested or charged. Authority is reinforced by the symbols of

the job – cars, radios and uniforms all signify the authority vested in the role of police officer (Holdaway 1983).

Police officers are also geographically and socially isolated. Policing involves shift work, therefore they are often working when others are enjoying their leisure time, and they may not be able to undertake many leisure pursuits involving the general public and may find it difficult to maintain friendships with non-police officers. In some areas, the police may live in police accommodation. Police officers tend to mix socially with other officers and they may prefer to let their hair down where they are not observed by the public.

All these aspects give rise to a strong occupational culture within the police, described by writers such as Holdaway, Reiner and Brogden (Reiner, 1992a; Brogden et al 1988; Holdaway 1983). While it is impossible to make sweeping generalisations about this culture, certain themes appear to characterise police culture in Anglo-American societies.

The majority of the studies emphasise that police officers feel that their job is important: they feel a sense of mission. They often see themselves as forming a 'thin blue line', protecting society from disorder. A key part of this mission, which attracts many to the job, is catching criminals. Thus law enforcement tasks are described as 'real police work', making an implicit contrast with much hated desk- or paper-work, and reflecting an emphasis on action, most clearly in the imagery of the car chase. Car chases, according to Holdaway (1983) are often the subject of animated conversations in the dull moments in the canteen and they form an important part of police folklore. This may mean that more mundane elements of policing are downgraded and seen as 'rubbish' rather than 'real' police work. Nonetheless the emphasis on catching criminals is reflected in how the police are assessed – the clear up rates – and there is a great

emphasis on the figures. Resolving a dispute without an arrest is less amenable to measurement and may be seen as less important.

There is a factor of machismo within police culture with an emphasis on action and crime fighting. This, plus conservative views about gender relationships, affects their views towards women officers – who are treated protectively. Indeed attitudes about women officers demonstrate many elements of the police culture. Heidensohn found that a common objection to women officers is that they cannot handle a group of drunks. This implies, she argues, ‘that a macho way of handling drunks is more appropriate than the persuasive ‘soft cop’ image associated with women police’ (Heidensohn 1992).

Reiner also sees police culture as containing strong elements of conservatism (Reiner 1992a): ‘This does not imply that all police vote Conservative but that police tend to hold very traditional views about crime, the family, law and order and discipline. Indeed it would be surprising if they did not as they have chosen a job which involves upholding the law’. These attitudes, however, may affect their judgments about the people they come into contact with most. It may also affect aspects of discrimination both in relation to the public, and within the force itself. The social isolation of the police further reinforces these beliefs.

Any consideration of police culture is important when policy reforms are considered. For example, the view of police work which is associated with the love of action may mean that many officers resist community policing styles, and the elements of machismo, racism and conservatism may affect how well women and ethnic officers can be integrated. The occupational culture may also affect the emphasis placed on crime control and due process. This is not to say that attitudes cannot change and it is important not to paint too static or simple a picture.

Studies of policing have found that detectives may have a perspective and a culture very different from uniformed officers and may need to adopt very different styles to perform their job adequately (Hobbs 1991). Different stations within a particular area may have very different cultures, affected by the policy of the division (Foster 1989). Some officers may value their role within the police community, whereas others may see themselves more as crime fighters. Cain (1973) argues that rural policing may be very different from urban policing, with rural police being more involved in all the tasks of the police simply because of the time it may take to call in the specialists from the town. Those involved in public order duties, especially those in special patrols, may also come to look forward to a 'piece of action' (Jefferson 1990).

Rules and police work

People generally think of policing behaviour as being shaped chiefly by the application of rules and set procedure. Some of these originate from the law and the Judges' Rules, for example the requirement that suspects should be formally cautioned in certain circumstances; others originate from within the Force, for example the requirement that officers in uniform should not buy a drink in a pub. In both cases they act as a set of negative constraints. Formally, they are intended to limit the area of individual initiative: by ensuring that certain things are forbidden or done to a formula, they are meant to reduce the chance that things will be done badly or wrongly, or not at all.

It is true that a complex network of rules and set procedures is a central feature of the way the Force is organised, but there are dangers in taking too superficial a view of the way that this works. It is important to recognise that these rules are almost purely negative in their effect: that is, police officers may be disciplined, prosecuted or otherwise get into difficulties if they are seen to break the rules, but they will not necessarily be praised, enjoy their work or achieve their career objectives if they keep to them. The positive objectives of police officers are much more informal and difficult to

define than the framework of rules within which they operate, but may have an equally important influence. Consequently the view that policing behaviour is chiefly shaped by the rules may well be wrong.

Because a rule exists, it does not follow that it automatically and rigidly governs day-to-day policing behaviors. At the extreme, a rule may be universally ignored and never invoked to discipline anyone. More important are the intermediate cases where a rule is invoked only in certain circumstances and where it has some effect on policing behaviour, but not the simple and direct influence that might be imagined. There are many reasons why this should happen. There is usually considerable scope for different interpretation and application of the rule (for example, that officers should only use what force is necessary to make an arrest).

Information about what the officer actually did is usually very limited because of a lack of independent witnesses, the strong tendency for officers to back each other up and the small amount of direct supervision. Also, there may be a very sharp conflict between 'doing the job well' - that is, achieving objectives that are widely recognised inside and outside the Force as being desirable -and sticking rigidly to the rules. For all of these reasons, a gap opens up between the formal rules and procedures and the kind of behaviour that police officers generally recognise as being acceptable.

One way of putting this is to say that while police officers know what the rules are and bear in mind the consequences of being found to have broken them, not all the rules become internalised into guiding principles of their behaviour. To take a minor example, an area car is formally forbidden to drive at high speed, with siren going and light flashing, to a call to which it has not been assigned (where other cars have been assigned instead). The driver may not think it is wrong to do this, he may not blame himself for doing it, but he knows that if he crashes the car on the way he is liable to be disciplined. In that case, the rule has an influence as an external hazard with which the

driver has to contend and not as a personal rule of conduct. The driver has to weigh up the chances of coming unstuck if he goes to the call, but may well decide to risk it, especially if he feels (according to a different code) that he is expected to go because another police officer is in danger.

Where the rules are internalised, they are likely to have a far more consistent controlling influence. For example, if officers believe that it is wrong to behave oppressively towards suspects in order to get confessions, they will never, or almost never, do so; if they do not believe it is wrong, at any rate in certain circumstances, but regard the rule as a hazard to be taken into account in deciding how to behave, they will still be restrained to some extent by the rule, but may behave oppressively if they personally feel it is justified and if they think they can get away with it.

A third kind of function of rules is to put a gloss on policing behaviour so as to make it acceptable to the wider public. It would argue, for example, that the limitation by law of police powers to stop and search people on foot amounts to a set of rules with a largely cosmetic function. In theory, police officers may only stop and search people who they reasonably suspect to be in possession of stolen goods or controlled drugs; in practice they can stop and search virtually anyone, and a police officer will rarely be disciplined or reprimanded for making a stop where he was not entitled by law to do so (though he may be criticised for making a stop that is most unlikely to produce a 'result').

An alternative view of the relationship between rules and policing was put forward in the PSI Report, *Police and People in London* (PSI, Smith and Gray, 1983). The authors of this report shared some of the scepticism about the extent to which policing behaviour is primarily influenced by formal rules, and suggested that their effect might depend on whether they were treated as working rules, inhibitory rules, or presentational rules. These were essentially different functions, as the same rules may perform more

than one function or may be used differently by different officers or at different time. It was not argued that the influence of rules upon policing should be totally ignored: 'None of this means that rules are unimportant: it does mean that they have a variable influence on policing behaviour, depending on what kind of rule they are taken to be, on how they are interpreted and used by senior officers, on how they interact with the norms and objectives of working groups'. (Smith and Gray, 1985, P.442).

Discretion in police work

The efficiency of the regulations for police work depends on how they are enforced and implemented on the street, in the police station and by the policies and priorities drawn up by chief constables. The police have significant discretion at all stages of the criminal justice process – quite simply they cannot enforce all the laws all the time. To effect anything approximating full law enforcement would result in extremely large numbers of police officers exercising surveillance over the population. This would be extremely costly and would lead to what would be regarded as a police state. The police therefore have neither the numbers, resources nor technological capacity to enforce all laws fully. Thus law is selectively enforced even within the context of zero-tolerance policing where a higher police presence on the streets aims to change the perception that minor crimes will be ignored by the police.

Senior officers must settle on the policing approach and priorities for their area within their given funds and national and local policing strategy. Some may favour an emphasis on community policing, others may target particular offences. These general policies are implemented by areas and divisions who may also interpret policy in the light of what they see as the most pressing problems of their own areas. In the police station yet more discretionary decisions are involved. How suspects are dealt with, interrogated, and charged are all decisions made at this level along with decisions about cautioning or formally proceeding. Police officers on the streets have discretion in

deciding where to patrol, what to investigate, whether and how to intervene in incidents, or whether to stop and search members of the public.

Unlike many other organisations, where those at the top exercise the greatest amounts of discretion, police officers on the street have to make difficult decisions on the spur of the moment. This is illustrated in comments made by the Commissioner of the Metropolitan Police, Sir Paul Condon, who said in a speech in October 1993 that many key decisions have to be taken by some of the most junior officers. He went on to say 'they are expected to be counsellors, negotiators, mediators, managers, advisers, experts, parental figures, law enforcers and humble servants, ready to make contentious decisions, some involving life or death'.

Certainly main concerns are not just about the deployment of police for street work. The total variety of police work has to be prioritized. Traffic flows in London are a top concern for most citizens; so far only 600 officers in the Metropolitan Police are organized full-time on traffic responsibilities. Is this enough? In terms of crime work the Commissioner pointed out the following top three priorities for 1994; terrorism, burglary and armed crimes. After a procedure of public consultation the Metropolitan Police recognized the following three aspects of their work as the highest priorities for the public: provision of an emergency response service (999 calls); more visible street patrolling, even though this is unlikely to result in an increase in crime detection; and the investigation of sexual crime with proper consideration being given to victims.

There have been many studies of aspects of police discretion exploring how decisions are made and how tasks are prioritised. Obviously the law limits the use of discretion, but a variety of non-legal or extra-legal factors are also significant, and there may well be a gap between the law in action and the law as explained in books. Overall, while the law forms the background against which decisions must be made, it is often vague and requires understanding – what situations, for example, give rise to 'reasonably

suspicion'? The immediate situation affects the way an event will be dealt with. Results may be affected by apparently trivial circumstances such as the weather, the officer's mood, or the time of day. For example, at the end of a fixed long shift, an officer may not want to be delayed by the amount of paper work which often results from an arrest. On the other hand, on a wet cold night the officer might want to get back to the station and might even look out for people whom it would be legal to arrest (Cain 1973). Many studies of police behaviour have found that a wide variety of factors affect how the police react to specific incidents of public order, such as drunken brawls, disturbances by youths or arguments between neighbours.

Whether a person is likely to be seen as 'suspicious' depends also on cultural cues. The police have a set of ideas about what type of people belong in a certain area, and when and in what situation one should expect to find them. Behavioural prompts like walking slowly or quickly may also effect decisions of 'suspiciousness' – and these are also strongly culturally determined. The local information and experience of the officer is likely to be significant here, as is the local police culture which describes certain areas and groups as likely to produce trouble, and which also provides a rule for appropriate responses.

Many studies have focused on the exercise of police discretion at street level – maybe because this aspect has resulted in so much criticism. It is also more visible and easier for researchers to examine. Police rules and associations, both national and local, also have an effect on the use of discretion and where it is exercised. They will determine the main concerns and style of policing in all areas and groups of the population with whom the police come into contact. Policy is a critical aspect of discretion, as it influences and informs other decisions.

Police decisions on the street

In theory, police investigation had to take place before arrest (a due process approach), although in reality many people were forced to help the police with their inquiries in custody. Now, arrests are often made to facilitate investigation, bringing the formal rules into line with a crime control reality. The current legal position is somewhere between crime control and due process. Both stop-and-search and arrest without judicial warrant are allowed for most normal crimes such as theft, burglary, serious assaults, sexual offences, drugs offences and public order.

The importance of the words 'reasonable suspicion' in relation to stop-and-search powers has previously been pointed out. The PACE codes state that this must not be based on someone's race or hairstyle, on the fact that they are members of a group or community associated with a particular type of offence, nor on the fact that they are known to have previous convictions for possession of unlawful articles. These guidelines however, like the law, are limited. Decisions to stop and search are made on the spot, and rely on the individual officer's judgment of the situation. In deciding whom to stop, officers are looking for something incongruous, such as a thing which doesn't fit (Dixon *et al* 1989). They are encouraged to learn, as part of their training, to identify such situations. This in turn implies a conception of normal – what does fit, which may depend on factors such as age, sex, race, behaviour, dress, time and place. These are impossible to capture by guidelines. Additionally, argues Dixon, laws such as PACE are limited because they view a stop as an isolated event with its own set of rules. Often, however, officers do not have any specific purpose in mind when they stop someone – they may be acting on a hunch the reasons for which cannot be legally defined. Thus a decision to stop and subsequently to search is a process rather than an isolated event. Many studies have found that factors such as being 'known to the police' by virtue of previous convictions, or failing to show appropriate respect for the police

officer's authority may constitute informal reasons for a stop or an arrest (Dixon et al., 1989). Police discretion and the exercise of judgement are still operative even when arrests are initiated by citizens. The same is true when information is obtained from informants, on whom the police increasingly depend (Maguire and Norris, 1992; Field and Pelsler, 1998).

Clearly, police powers on the streets have been drawn too widely and used too arbitrarily. Decisions are constrained only loosely by law: the powers themselves, based on reasonable suspicion, are ill-defined and subjective; many of the offences for which the powers are exercised are similarly ill-defined; and the police largely set their own priorities. Significant influences on the exercise of discretion are general policing objectives and specific police force policies (Miller et al., 2000; Reiner, 2000). Discretion is also created as a consequence of the way offences are defined. How carelessly does someone have to drive before an officer is likely to pull him or her over, for example? So, stop-and-search and arrest decisions are constrained only loosely by law: the powers themselves, based on reasonable suspicion, are ill-defined and subjective; many of the offences for which the powers are exercised are similarly ill-defined; and the police largely set their own priorities. Equally important influences on the exercise of discretion are general policing goals and specific police force policies (Miller et al., 2000; Dixon, 1997; Reiner, 2000).

Ethnic minority groups

The Code of Practice stresses that reasonable suspicion can never be justified solely on the basis of factors such as a person's age or colour or a stereotyped image of certain persons or groups as more likely to be committing offences (Code A, 1.7). Smith and Gray (1985) point out that racial stereotyping was responsible for the targeting of particular groups, particularly Afro-Caribbeans. Pre-PACE studies suggested that Afro-Caribbeans were much more likely to be stopped than white people (Willis, 1993; Smith

and Gray, 1985; Southgate and Ekblom, 1984; Jones et al, 1986). Norris et al. (1993) found that blacks (and especially young blacks) were more likely to be stopped by the police than whites. Several post-PACE studies are to similar effect (Skogan, 1990 and 1994; Crawford et al., 1990; Young, 1994). In considering the significance of these findings, it is necessary to bear in mind that the black and white populations have different age and class structures (FitzGerald, 1993). In particular, the Afro-Caribbean population has a high concentration of young people and is predominantly drawn from the working class. Several commentators have pointed out that researchers comparing black and white people will inevitably find differentiation, because they are comparing dissimilar populations (Walker et al, 1990; Jefferson, 1993; Reiner, 1993). Skogan (1990) found that young Afro-Caribbean males were only slightly more likely than their white counterparts to be stopped. And, on re-analysing the SICS data, Young (1994) found that young black working class males were only slightly more likely to be stopped than whites.

Sanders and Young (2000) argued that there is no doubt that many local communities get intensely angry and feel harassed as a result of stop and search, especially when they perceive these powers to be exercised in a discriminatory way. Bucke (1997) found that 33 per cent of Afro-Caribbean males report being stopped, as compared to 21 per cent of white and Asian males. He also, argued that Afro-Caribbeans were more likely than Whites and Asians to be searched once stopped, more likely to be arrested, and more likely to be repeatedly stopped. Walker (1990) and Jefferson (1993) found that, in poorer areas where the majority of black people lived, they were less likely than white people to be stopped, but in areas where relatively few black people lived they were more likely to be stopped.

Crime surveys have also examined the experiences of Asians. It would appear that the likelihood of their being stopped tends to be similar to or lower than that for white people (Skogan, 1990 and 1994; Walker et al., 1990; Young, 1994).

In the police station

Detention and questioning

A person arrested for an offence must normally be taken to a police station as soon as practicable after the arrest (s30). If the arrested person is to be detained for more than six hours, s/he must be taken to a designated police station before six hours has elapsed (s30). A breach of this requirement would render continued detention unlawful.

Section 35 requires the chief officer of police for each area to designate police stations appearing to provide enough accommodation for the purpose of detaining arrested persons. At designated police stations, the duties of custody officer can be performed by any officer (s36).

The custody officer must ensure that persons arrested are informed about their rights on arrival at the police station. These include first, a right to inform someone that they have been arrested. Secondly, any persons arrested have the right to contact and consult a solicitor in private. If they do not wish to or cannot contact a solicitor, or do not have one, free advice is available from a duty solicitor who can be contacted round the clock. Thirdly, arrested persons have the right of access to PACE and the codes (PACE, Code of Practice C).

The police are not allowed to stop suspects exercising these rights. They may delay their exercise, but only under very strict conditions (Code of Practice C). Brown et al. (1992) found that the police applied their delaying power to around one per cent of requests in 1988 but only 0.2 per cent of requests in 1991. They also found that very few people ask for visits, and less than 10 per cent of suspects ask for a phone call.

Even though the suggestion is that the police rarely exercise their powers of formal delay, informal delay is more common. Dixon et al. (1990) suggest that informal delay in intimation may be deliberate, for example, when officers who wish to search premises wait to inform a suspect's family of arrest until they arrive to search his/her house. They also point out that informal delay is often an unintentional product of pressure of work. It takes time for officers to get around to informing a relative or friend of someone's arrest. The result is that the provisions on intimation, while embodying due process value, are not fully adhered to. However, since s 56(1) merely provides that intimation should be done as soon as practicable, it is difficult for suspects to demonstrate that the law has been broken. Thus there are no reported cases where delay of intimation or refusal to intimate was in issue (Mirfield, 1997). Requests for phone calls also frequently appear to be informally delayed or ignored. Brown et al. (1992) found that custody records recorded requests in 7-8 per cent of cases, but they observed requests being made in 10-12 per cent of cases. Additionally, it is no use telling suspects what rights they have if they do not understand what they are being told. Sanders and Young (2000) argue that police often made little or no effort to help suspects understand their rights when PACE was first enacted, and it appears that little had changed 10 years later.

Suspects are often intimidated by the prospect of 24 hours in the cells. Decisions concerning the necessity of detention are consequently of great importance. In recognition of this, the custody officer has to complete custody sheets that record everything that happens to, and is decided about, detained suspects. Additionally, this evidence is written by the members of the agency against whom it is supposed to be a protection rather like records of stop-and-search. Thus despite the outward appearance of everything being done 'by the book', detention is hardly ever refused, reviews of detention can be perfunctory and the suspect might remain in custody for as long as

investigating officers wish, subject to the time limits stated in PACE (Dixon et al., 1990; McConville et al., 1991; Phillips and Brown, 1998).

Access to legal advice

PACE states that free legal advice is to be provided to all suspects who request it. Information about this unambiguous right has to be provided by the custody officer to the suspect. Custody records state whether or not suspects were informed of their rights, whether or not suspects requested advice and what (if anything) happened then. Request rates have now risen to around 40 per cent and actual advice rates to around 34 per cent (Bucke and Brown, 1997). This is a massive increase over the pre-PACE situation, when fewer than one in ten suspects requested advice (Sanders and Young, 2000) but, even today, two out of every three people do not make use of an entirely free service that is designed to help them.

The research (summarised by Brown, 1997; Sanders and Young, 2000) shows, first, some suspects do not request advice because they are not informed (wholly or partly) of their rights; some suspects' request are denied, ignored, or simply not acted upon (custody records recording only some of these instances; and the police often attempt to dissuade suspects from seeking advice and to persuade them to cancel their request. A study by Sanders et al. (1989) found that suspects wait in the cells until the solicitor arrives at the police station.

The studies have shown variations in requests for legal advice to be due to a number of factors. These include: the kinds of offences found at each station, with type of offence and level of seriousness important factors in determining request for legal advice (Brown, 1989; Phillips and Brown, 1989); factors centring on the suspect including his or her ethnicity, employment status, physical and mental condition on arrival at the police station, and issues concerning bail and previous convictions (Phillips and Brown, 1998) differences in the availability of legal advice between areas

(Brown, 1989); the way in which the right to legal advice is conveyed by custody officers to the suspect (Morgan et al., 1991; Sanders et al., 1989; Bottomley et al., 1989); more intangible factors including culture differences between areas, suspects' views on the usefulness of legal advice emanating from experience and folklore, general views of the police, and the station where the suspect was taken on arrest (Morgan et al., 1991; Phillips and Brown, 1998).

Once again, the specific legal power of the police to detain gives them a more generalised power that goes beyond the written law.

Police interrogation

The PACE requirements on the interrogation of suspects reflect the Royal Commission on Criminal Procedures (RCCP)'s concern with minimising the risk of false or unreliable confessions. At the same time, they are designed to make the police's task easier by providing clear rules about the conditions under which interviews are to be conducted. Detailed guidance on interviewing is found in Codes of Practice C (on the detention, treatment and questioning of suspects) and E (on tape-recorded interviews).

The purpose of interrogation is to obtain from the person concerned their explanation of the facts and not necessarily to obtain an admission. Several studies have considered why police officers undertake interviews (Irving and McKenzie, 1989; Williamson, 1990; Moston et al., 1990; McConville and Hodgson, 1993; Stockdale, 1993). Williamson (1990) provides some evidence that under PACE the purpose is less often to obtain a confession. However, there are grounds for doubting whether these conclusions are reliable.

Irving and McKenzie (1989) found a considerable decline between 1979 and 1987 in the proportion of cases in which the stated purpose of interviews was to obtain a confession as the primary evidence against the suspect. This was quoted as a reason for interviewing in 15 per cent of cases in 1987 compared with 25 per cent in 1979. Far

more often than before, the reason was to secure a confession as supplementary evidence. In addition, both they and McConville (1993) point to anxiety about gathering more evidence to strength the case after arrest but before interview. The latter found this occurred in over half the cases.

Irving and McKenzie (1989) found that a significant amount of interviewing is for what they term 'directorial' purpose. There may be *prima facie* evidence, but questioning is considered necessary to establish *mens rea*. According to them, the quantity of interviewing for this purpose has changed little under PACE.

Williamson (1990) found that obtaining a confession has become a less significant purpose. He found that, in a questionnaire survey of 80 detectives in the MPD, only 12 per cent rated the main purpose of interviewing suspects as being to obtain a confession. The majority considered that the purposes of interviewing were to arrive at the truth, obtain an explanation of the facts or secure evidence.

Moston et al (1990), in a study that included a survey of detectives and interviews over a thousand cases at nine MPS stations, found that 80 per cent of responses pointed to confession as the objective of interviewing. Confession was viewed as the main evidence in 30 per cent of cases and as supplementary evidence in 50 per cent. The figure of 80 per cent is not much higher than the overall number of cases in Irving and McKenzie's study in which confession was referred to in some guise as the purpose of interviewing. The number of cases in the Moston study in which confession was viewed as providing the main evidence was higher. It may be taken to support the view that, in concrete cases (Williamson, 1990 and Stockdale, 1993), detectives still view confession as having essential significance.

It has often been supposed that the police see the main purpose of interviewing as the obtaining of a confession, and this is entirely normal. There is a secondary purpose, however, such as the obtaining of criminal intelligence; but confessions are the primary

objective. A variety of studies have pointed to the centrality of confessions in the investigative process, for they are viewed by the police as a quick and useful way of clearing up crime (Mawby, 1979; Morris, 1980; McConville and Baldwin, 1981; McConville et al., 1991; Evans, 1993; Mortimer, 1994). There have been recent attempts to change this 'confession culture'. A combined Home Office and ACPO plan has sought to inject a more open-minded approach into investigative interviewing, stressing the significance of allowing suspects to present their own version of events and of keeping the possibility of the suspect's innocence clearly in view (Mortimer, 1994; Central Planning and Training Unit, 1992a and 1992b).

Softley et al. (1980) and Irving (1980) suggest that just over 60 per cent of interviews led to confessions. Irving and McKenzie (1989) took the opportunity to compare the confession rate at the same location before and after the introduction of PACE. They found no clear-cut effect. In 1986, in spite of a decrease in the use of tactics to a quarter of their 1979 level, there was actually a minor rise in the amount of suspects admitting offences during interviews, from 62 per cent to 65 per cent. In 1987, when there was some return to the use of tactical interviewing, the confession rate fell to 45 per cent. However, the 1987 sample contained a higher number of serious offences than the earlier samples which were not directly comparable with them.

McConville (1993) found that in a sample of 465 cases drawn from six stations confession were obtained in 59 per cent. The same figure is given by Moston and Stephenson (1993), drawing on a sample of 558 cases from three forces. Phillips and Brown (1998) found a somewhat lower confession rate of 55 per cent in a sample of nearly 3,000 suspects interviewed at ten police stations, while a similar figure of 54 per cent was found by Sanders et al. (1989) in a sample of nearly 250 cases, also at ten police stations.

The confession rate varies in relation to the strength of the evidence. Moston et al. (1992) found that 67 per cent of suspects made admissions where the evidence was strong, 36 per cent where it was moderate and 10 per cent where it was weak. McConville (1993), looking at suspects in general, found a similar but less noticeable pattern. Where the evidence was strong, 64 per cent confessed, compared with 46 per cent where it was weak. Phillips and Brown (1998) used a rather different measure of evidential strength, looking at whether there was sufficient evidence to charge at the point of arrest. They found that 67 per cent of suspects against whom there was sufficient evidence at this point confessed, compared with only 36 per cent where the evidence had not reached this standard.

Conclusion

This chapter has shown how the law in books is shaped by numerous factors: the mechanisms of accountability and the style of policing; the police culture; rules of police work; police discretion and police practice. The law then provides only a backcloth against which the police operate on a day-to-day level, which is inevitably affected by their own perception of their job and how they interpret the many rules and guidelines. This is important for a number of reasons. Should the police, for example, perceive their main role as one of crime control, then they may be tempted to neglect due process in the interests of making sure that those guilty of crime are brought to court and found guilty. They may, as we have seen, downgrade the service or preventive aspects of their role. Discussions of police policy must therefore recognise the significance of discretion in police work and the role of police culture and its influence on police work.

An alternative view of the relationship between rules and policing was put forward in the PSI Report, *Police and People in London* (PSI, Smith and Gray, 1983). The authors of this report shared some of the scepticism about the extent to which policing

behaviour is primarily influenced by formal rules, and suggested that their effect might depend on whether they were treated as working rules, inhibitory rules, or presentational rules. These were essentially different functions, as the same rules may perform more than one function or may be used differently by different officers or at different time. It was not argued that the influence of rules upon policing should be totally ignored: 'None of this means that rules are unimportant: it does mean that they have a variable influence on policing behaviour, depending on what kind of rule they are taken to be, on how they are interpreted and used by senior officers, on how they interact with the norms and objectives of working groups'. (Smith and Gray, 1985, P.442).

Many studies have focused on the exercise of police discretion at street level – maybe because this aspect has resulted in so much criticism. It is also more visible and easier for researchers to examine. Police rules and associations, both national and local, also have an effect on the use of discretion and where it is exercised. They will determine the main concerns and style of policing in all areas and groups of the population with whom the police come into contact. Policy is a critical aspect of discretion, as it influences and informs other decisions.

Clearly, police powers on the streets have been drawn too widely and used too arbitrarily. Decisions are constrained only loosely by law: the powers themselves, based on reasonable suspicion, are ill-defined and subjective; many of the offences for which the powers are exercised are similarly ill-defined; and the police largely set their own priorities. Significant influences on the exercise of discretion are general policing objectives and specific police force policies (Miller et al., 2000; Reiner, 2000).

In general, the law appears to exert less moral force on the police than is often believed, for there is a gap between many legal rules and the working rules of the police. This means that much of the law is presentational in nature, providing a misleading appearance of a system subject to numerous inhibitory due process

safeguards. In reality, law-breaking by the police and lesser failures of due process are tolerated within a system which generally fails to punish and deter the police or to compensate most victims of those practices.

From England and Wales, we know that the law in books is in reality mediated by the working practice of police officers. Numerous studies have shown that officers do not blindly enforce the law, they use the law to achieve their practice goals. Nor do they always follow the law; they may hinder suspects' attempts to legal advice stop and search people without reasonable suspicion and so on.

Therefore to understand the extent to which the formal rules governing police procedures in Saudi Arabia actually influence police practice is an empirical matter. Given the similarities of the law in books between the two countries, the relevant literature on England and Wales, will provide a guide to our analysis of policing in Saudi Arabia. It will provide a sound basis for judging how the rules govern policing in Saudi Arabia are determined.

The criminal justice system in Saudi Arabia will be examined in the next chapter.

CHAPTER TWO: THE CRIMINAL JUSTICE SYSTEM IN SAUDI ARABIA

- **The police authority in Saudi Arabia**
- **The Organisation of the Public Security (the police)**
- **Public Prosecution Service**
- **Divisions of Courts**

CRIMINAL JUSTICE SYSTEM IN SAUDI ARABIA

This chapter examines the criminal justice system in Saudi Arabia and explains the organisation of the agencies such as the police, courts, prosecution and prisons. The sources of the materials in this chapter are: Alharthi (1990); Alsholhoob (2000); Alzahrani (1999); Alahmari, et al., 1997 and Omar (1991).

The Police Authority in the Saudi Arabia

Prior to the unification of the Arab Peninsula and the establishment of the Kingdom of Saudi Arabia by King Abdulaziz Al-Saud, police authorities existed only in Mecca, Jeddah and Medina. During that time, the police authorities were simply a tool for enforcing the will of the rulers in these cities. They had no system to organise its affairs, operations and procedures. Moreover, the police authority in each city was an autonomous and independent entity, which had no connection with the police authorities in other cities. Furthermore, the operation and activities of these police authorities were confined to cities only and did not extend to villages and rural areas unless the ruler brought the disputing individuals to the city for the police to investigate the dispute and imprison those who were sentenced to prison.

When King Abdulaziz entered Hijaz in 1923, he established a general police *commission* in Mecca and placed it under the authority of his deputy in Hijaz. The new commission was concerned with preserving law and order across the Holy Land and was entrusted with the protection of the security of the pilgrimages. The King also established police departments in Mecca, Jeddah and Medina. These departments were entrusted with security affairs, including passports and monitoring foreigners.

In 1926, the Royal Decree No. 344 united all the police departments in the Kingdom under one central management which was based in Mecca. Based on this Royal Decree,

the Deputy of his Highness in Hijaz issued an order that organised the work of the various police departments and specified their duties and responsibilities. Accordingly, the General Police Commission was developed, its branches increased and its responsibilities extended across the Kingdom. For example, new police departments were established in Taief, Riyadh, Ihssa, Abha, Nijran and Jizan. The responsibilities of the police were also expanded to cover activities such as fire brigade, looking after orphans and the elderly, organising road traffic and preserving public social order. Institutions that were concerned with 'promoting virtue and preventing vice' in Hijaz were linked to the Police Commission in Mecca and with police departments in other cities.

In 1930, the system of 'Agents' was abolished and a Ministry of Interiors was established for the first time. The Decree that announced the establishment of the Ministry of Interiors also attached the Public Security to the Ministry.

In 1949, a Royal Decree approved the establishment of the Public Security Commission Act. The Act specified the sections of the Commission, its duties, the procedures that govern its activities, the rules that govern the investigations and the prosecution procedures that ought to be followed. The decree also specified the safeguards that must be observed to ensure that justice is properly done when investigations are carried out with defendants, witnesses and claimants.

The Organisational Development of the Public Security

As the public security service is one of the main pillars of the state and as it's concerned with protecting the security of the public and the general order in the country, it has been given special care in order to enable it to operate effectively, efficiently and in accordance with modern organisational systems.

During its evolution process, the activities of the Public Security were diversified and its directorates were developed to a point where many of them became independent bodies directly linked to the Ministry of Interiors. The Civil Defence Force, the General Investigations, King Fahad Security College and the Special (Elite) Security Forces are a few examples of these bodies. New units such as the Hijaz Force, which is concerned with the security of the pilgrimages and the visitors of the Holy places, were also established within the Public Security. A special emergency force which is concerned with the general security and the prevention of disturbances was also established and equipped with all the necessary means to resources. A Roads Security Force was established to protect the public's security in roads across the Kingdom and a General Directorate/Department for Traffic was set up and entrusted with monitoring and supervising the traffic affairs across the country.

A Prison Department was also established. This department was later developed into a modern and progressive General Prison Directorate that developed the work of prisons and transformed them into institutions of reform and discipline.

With the development of the activities of the Police and the diversification of their responsibilities, they became equipped and acquainted with modern technical tools and means. Assisted by forensic laboratories which are equipped with cutting edge technology, the police were able to solve more complex crimes. Furthermore, the development of modern personal identification units facilitated and accelerated the process of personal identification using finger printing and other methods.

The security forces were also provided with operation rooms which are equipped with modern communication tools to speed up the communications between different departments of the police across the country. This is in addition to the use of modern monitoring equipment and short a range communication tool to facilitate the communications between police patrol units within the cities.

The Public Security Commission gave particular priority to training and development and established a directorate for training and development which develops training programmes. The training directorate also oversees and supervises the Public Security Training Town which was established as a comprehensive town that provides various training for the different directorates and branches of the Public Security.

As a result of the development in the organisational and procedural system of the Public Security, the advanced training of its staff, and the modern technology made available to them, the Public Security of the Kingdom has now become a contemporary and modern institution that is comparable to American and European Police Departments.

The Organisation of the Public Security

The organisation structure is governed by the general duties in a way that guarantees the achievement of the responsibilities of the organisation, their flow and provide an adequate supervision for its staff in a manner that enables it to fulfil its duties completely and as a coherent, collective and integrated body.

The duties of the Public Security were specified in Article 2 of the Internal Security Force Act. The Article states that:

The Internal Security Force is the armed forces responsible for maintaining order and preserving public security at sea and on land; and particularly preventing crimes before they take place, and controlling and investigating crimes when they are committed, and protecting lives, honour, wealth and property as directed by the Acts, the Royal Decrees, the resolutions of the Council of Ministers and the orders and decisions of the Minister of Interiors' (Alharthi, 1990).

The organisation of the Public Security was therefore, established on the basis of the general principles and rules and was based on the requirement of the police and the security services and in accordance with the recommendations of the Second Conference for the Leaders of Police in the Arab Countries. The organisation of the Public Security also took into consideration the administrative divisions and the naming systems adopted in the Kingdom. Hence, the organisational structure was set as follows: Firstly, the responsibilities were divided as follows:

1. The Responsibilities Necessary for the Achievement of the Objectives

A. the responsibility of the main police post, which are carried out by the Operation Affairs and its branches as follows:

The Administrative Control Division

This division is concerned with crime prevention, which is one of the essential responsibilities of the police. This crime prevention is achieved through a number of procedures and duties such as patrols, guards and the procedures of maintaining order and upholding the law.

The Crime Control Division

This division is responsible for solving crimes when they are committed. It is concerned with investigating crimes, arresting suspects and gathering evidence on crimes and presenting it at court.

These responsibilities are achieved through a number of procedures and duties such as interrogations, forensic investigations, search and investigations of criminal evidence.

B. Specialised Responsibilities

The specialised responsibilities include Traffic Control, Drugs Combating, Security of *Establishments*, Road Security, Hajj and Festivity Force and the Special Emergency Forces. As these security responsibilities and duties, are concerned with maintaining

order are of a specialised nature, each of them is devoted to an independent administrative entity within the organisational structure of the Public Security.

Supporting and Subsidiary Roles

The supporting and subsidiary roles include:

- Training
- Budget
- Personnel department and the financial and salaries-contracts- Accounts.
- Supplies and logistics-and uniform.
- Arming
- Communications.
- Planning and organisation
- General affairs
- Prison services
- Monitoring.

The Main Responsibilities and Duties of the Public Security

The Responsibilities of the Public Security

The responsibilities of the Public Security include:

1. The prevention of crimes and assaults.
2. Solving crimes when they happen and investigating them and arresting criminals; and presenting the relevant prosecution case against them in front of courts.
3. Combating drugs and drug related crimes; and controlling and investigating them.
4. Enforcing the sentences issued against convicted individuals and looking after them for the whole duration of their imprisonment; and reforming and training them so

that when they are released into the community, they become beneficial and valued members.

5. Organising the traffic flow and ensuring the safety of the public from road dangers; and controlling road accidents and the violations of the traffic laws; and their investigation.
6. Issuing driving and car licences.
7. Receiving complaints and allegations on civil disputes and rights and their investigation and referral to Sharia courts; and the enforcement of the judgement made by these courts.
8. Providing security and order in public events such as Hajj, festivities and the reception of important guests and football matches.
9. Providing security for the important establishments in the country.
10. Assisting the public bodies in enforcing the laws and rules which they were entrusted to uphold.

The Administrative Units of the Public Security and its Management

The Director of the Public Security

The Director of the Public Security is in charge of the overall management and the running of the Public Security services in the country. These services include bodies such as the Traffic services, Prison services, Drugs combating, special Emergency forces, Hajj , Roads and Establishments Security etc; and their various units and branches.

The Director of the Public Security is also in charge of approving the administrative structure and the duties of the various departments of the Public Security; and he is in

charge of the Police Commission and the establishment of new branches as he sees necessary.

The Deputy of the Director for Operation Affairs (DDOA)

The DDOA is responsible for the supervision, planning and co-ordination of the efforts concerning the preservation of security and order. Many directorates are linked to his office, particularly the prevention of crime (i.e. Administrative Control) and the prosecution of criminals (i.e. Crime Control) and the investigation of crimes and gathering of criminal and prosecution evidences. This is in addition to his duties of resolving civil disputes (civil rights) and controlling arms and explosives.

The Directorate of Administrative Control (*Crime Management and Prevention Department*)

This Directorate works through the public and the branches affiliated to it. It is responsible for the prevention of crimes, the reduction of chances of their occurrence, and the maintenance of peace, security and tranquillity among the public. To achieve its objectives, of protecting lives and property, the directorate adopts various means and tools. These tools and means include gathering intelligence, organising data and statistics that help in the process of discovering crimes, preventing them and understanding the causes of crimes.

Furthermore, the Directorate is responsible for preparing plans for working and driving patrols and checkpoints and supervising their operations and standardising the way they operate. It is also in charge of co-ordinating the work of all the patrolling operations and passing these operations' plans to various police departments and security units.

The Criminal Control Department (CCD)

The CCD is responsible for the supervision of the criminal investigation services in all areas and Commissions of the police, and the co-ordination between all the efforts concerning these matters. It is also in charge of the overseeing and scrutinising of crime reports and the efforts of the security men in solving them. The CCD is also responsible for investigating high profile crime, as instructed by the Minister and they assist and advise on these matters. This is in addition to their responsibilities in investigating crimes of a cross-region nature and crimes with effects that extend beyond the borders of the Kingdom.

Moreover, the CCD is responsible for re-examining unsolved crimes and crimes whose perpetrators are not known or have not yet been brought to justice. the. Beside these responsibilities, the CCD issues periodic bulletins to disseminate information on international criminals, runaway criminals, missing persons, unidentified bodies, means of crimes and lost property. It is also in charge of combating fraudulent activities and forgery.

The CCD undertakes all of the above duties and responsibilities through its Criminal Investigation Unit and its Criminal Intelligence Unit.

The Forensic Evidence Department (FED)

The FED is responsible for the technical procedure to solve crimes through the use of modern and advanced forensic techniques in gathering evidence from crime scenes. It analyses collected evidence and classifies and checks it against its database of fingerprints and other forensic evidences. The work of the FED is supported by its large team of technicians, experts and criminologists.

The main units in the FED are:

1. The Identity Investigation Unit.

2. The Forensic Laboratory Unit.
3. The Fraud and Forgery Research Unit.
4. The Monitoring and Observation Unit.
5. The Firearms Examination and Effect of Equipment Unit.

The Firearms and Explosive Department (FAED)

The FAED is responsible for enforcing the laws on regulations, decision and orders that regulates the ownership, storage and transportation of firearms and explosives. It is also in charge of disposing explosives as the need may arise. Hence, through its various units, the FAED is also responsible for supervising, importing, disposing and supervising all types of weapons and explosives. It issues orders that guarantees the safety of the public from the dangers and hazards of firearms and explosives.

The Civil Rights Department (CRD\CDD)

The Civil Rights Department is responsible for addressing and investigating civil allegations and disputes and referring them to the judiciary. When legal or administrative judgements, on these disputes are made, the CRD becomes in charge of enforcing them.

The CRD is also in charge of taking appropriate actions with regard to the legal claims of rights and civil disputes which are come from abroad or from within the Ministries. The department is also in charge of administering blood money (*Diyyah*), fines, debts of prisoners and the estimation of the prices of properties of prisoners who are owed private or public debts.

Furthermore, the CRD is responsible for taking the necessary procedures with regard to goods whose ownership or trademark is disputed until the matter is resolved with the appropriate bodies.

The General Traffic Department (GTD)

The GTD is a department with an attached budget. It operates in connection with the Public Security Commission. The GTD is responsible for:

1. Organising traffic inside and out the cities and preserving a safer road traffic system in order to protect lives and property.
2. Controlling traffic accidents and investigating matters of road traffic and road accidents.
3. Issuing all types of car licences, plates and signposts, driving licences and any related matters.
4. Collecting fines and fees and depositing them in the Saudi Arab Fund.

The authorities have taken three steps in order to improve and develop the performance of the GTD:

- a. National and international training programmes have been organised for all the people involved.
- b. The department assigns particular importance to the issue of the enlightenment and education of members of the public on matters of road traffic and safety. The department also organises a series of Traffic Education Week programme to disseminate knowledge on issues of safe driving and road safety.
- c. In order to improve its performance, the department invested heavily on the use of modern technology and advanced communication systems.

The General Department for Combating Drugs (GDCD)

The GDCD is also one of the departments that has its own attached budget and is linked to the Public Security Commission.

The GDCD is responsible for directing, co-ordinating and monitoring the activities of the bodies involved in combating the smuggling of illegal drugs. It is also responsible for carrying out operations that target the trade, usage, appropriation, propagation and exchange of illegal drugs. It also provides advice on the management of investigation relating to trading and propagating drugs. The department collects information and statistics and organises them in order to improve its operations and performance. It also co-operate with international bodies in drug related matters.

The authorities in the Kingdom have assigned a special importance to efforts to combating drugs. For example, in addition to the GDCD, a National Committee for Combating Drugs (NCCD) was established. The tremendous efforts exerted by the GDCD and the NCCD have resulted in a significant reduction in drug smuggling and propagation in the Kingdom, particularly after the introduction of the death penalty against those convicted of smuggling or trading in drug.

The General Department for Prisons (GDP)

The GDP is responsible for:

1. The welfare of prisoners and their social, academic and professional reform in order to restore their self-confidence and facilitate their return to the community as valuable citizens.
2. Co-ordinating the inmates' reform and improvement programmes and providing them with necessary health care.
3. Provide appropriate training for civilian and military staff working with prison inmates to enable them to carry out their duties efficiently and effectively.

Social Work in Prison

Each prison has at least one social worker who is in charge of studying the cases of inmates and their history in order to understand the reasons behind their deviant actions and the social circumstances that led them to prison. The social workers interact with inmates and provide them with advices, guidance that assists them in their lives following the completion of their imprisonment. The application of the *sharia* law in Saudi Arabia assists the work in prisons. For example preaching and providing guidance are seen as an essential element that helps many prisoners repent and reform. Furthermore, His Royal Highness the king has issued an order that gives an amnesty of half of the total prison period for any prisoner who can memorise the whole Quran by heart.

The social work among prisoners is not confined to prisoners only but includes looking after the families of prisoners and follow-up programmes that continue with inmates after they are released from prison.

The structure and the contents of social work are tailored to the specific needs of the inmates. Hence, special and appropriate programs are designed for men and women in prison and juveniles in reform centres.

The Police Commission in Saudi Arabia

The distribution of police commissions in Saudi Arabia follows the administrative system in the Kingdom so that each of the 14 areas in the country has a police commission that covers the whole area. These police commissions are the local representation of the General Commission of the Public Security. Therefore the nature, duties and responsibilities remain the same while the level of responsibility changes. For example, the crime control department in each area has the same responsibility within the boundaries of its area as the crime control department in the public security

commission. Similarly, the police commissions are the body responsible for preserving law, order and public security within the boundaries of their respective areas.

Public Prosecution Services

The Public Prosecution Department (PPD) was established for the first time in the Saudi Arabia in 1934. The Royal Decree No 1310.813 which announced the establishment of a post of Public Prosecutor assigned the post to the Head of the Justice section, or whoever he delegates from within the heads of the police. The public prosecutor represents public rights and interests in courts when a criminal case is heard. This put the police in charge of the role of the public prosecution, in addition to its traditional role in preventing crimes, investigating them, interrogating suspects and enforcing sentences after they are made. This role of the police as public prosecutors had also been confirmed in the decree number 3594 which announced the Public Security Act. The Act specified the names or posts of those who act as public prosecutors but did not specify any minimum qualifications for the police who assume the role of public prosecution. In the early years, entrusting the police with this role was justified by the fact that qualified individuals who could take this role were not available at the time. As the special expertise of the police is in gathering evidence of crimes and arresting suspects, putting them in charge of the role of the public prosecution is considered as inappropriate as this role involves legal matters and presentation of cases in courts requires someone who is legally qualified, independent and is not distracted by gathering intelligence and catching criminals.

As a result of the realisation of the overlap and possible conflict of interest between the role of the police and the role of the public prosecutor and the greater availability of qualified staff, a new Act (No. M/56) was introduced on 1987. The new Act announced the establishment of an independent body known as the Investigation and Public

Prosecution Services (IPPS). The Act states that the holders of the following posts may assume the role of investigation and public prosecution:

1. The head of the Investigation and Public Prosecution Services (IPPS). The head of IPPS is appointed by a royal order based on the recommendations of the Minister of Interior. He must at least satisfy the conditions necessary for the post of the deputy head of the IPPS.
2. The deputy head of the IPPS
3. Heads of investigation and prosecution sections (level A)
4. Heads of investigation and prosecutions (level B)
5. Representatives of the head of the investigation and prosecutions sections (level A)

The Responsibilities of the IPPS

The responsibilities of the IPPS have been specified by Article 3 of the IPPS act of 1987 as follows:

A. Investigating crimes

This takes the responsibility of crime investigation from the police who become focused on gathering evidence and intelligence necessary for the work of the prosecution and with their knowledge. Article 29 of the Act stated that the Act overrules any provision that contradicts with it. Hence the IPPS also assumes the responsibilities which were previously entrusted to the Monitoring and Investigation Department.

B. Deciding on whether to proceed with investigations and present them before a court or reserve them in accordance with the rules

- C. Acting as the prosecution representative in front of courts. In this role, the IPPS also replaces the work of the police and the Monitoring and Investigation Department.
- D. Appealing against sentences (judgement).
- E. Supervising the enforcement of sentences.
- F. Supervising and inspecting prisons, detention centres and similar places and listening to the complaint of prisoners and detainees. The IPPS is also in charge of investigating the legality of the detention and imprisonment of these individuals and taking necessary measures to release anyone who was illegally detained or imprisoned and taking action against those who imprisoned or detained them.

The IPPS reports to the Minister of Interior on these matters and reports to him every six months regarding the situation of prisoners and detainees.

The Responsibilities of the Public Prosecution

In accordance with the provisions of the Investigation and Public Prosecution Act and the executive rules relating to this Act, the responsibilities of the IPPS can be divided into two types: original responsibilities and complementary responsibilities.

The Original Responsibilities of IPPS

The original responsibilities of the IPPS can be summarised as follows:

1. Referring criminal matters relating to ordinary crimes to courts. It should be mentioned here that some crimes are referred to *sharia* courts by the public prosecution service while others, in which the Complaints Chamber has jurisdiction, are referred to courts by the Monitoring and Investigation Service. Other methods may be referred to courts by administrative authorities if the case

concerns a matter within their remit. However, if we consider the provision of Article 29 of the IPPS Act (which states that the IPPS overrules any Act that contradicts with its provisions) and Article 149 (which gives the IPPS the right to investigate big crimes such as bribery, forgery, frauds etc) and Article 150 of the same Act (which refers to the responsibility of the IPPS in investigating matters of precautionary suspension of officials, we will realise that the investigation and prosecution in all crimes-with the exception of those relating to professional breaches –have been entrusted to the IPPS.

The unification and centralisation of the investigation and prosecution of crimes is an important development in the Saudi justice system and one that guarantees the use of one standard in investigating and prosecuting all criminals. This is certainly bound to dispense more justice and assure rights for victims and villains alike.

However, the legislators realised that the full implementation of this new system would take time and would require human and financial resources. Therefore, Article 254 and 257 of the Act stated that agencies such as the Internal Security Force should assume the role of the IPPS until the full development of the IPPS is completed and becomes nationwide. In the meantime, the prosecution of crimes that receive the death penalty, amputation or stoning sentences must be referred by a prosecution order issued by the public prosecutor and reviewed by the IPPS.

According to Article 175 of the Act, the investigator also has the right of referral in ordinary crimes in the same manner. However, Article 176 states that in all cases, the previous history and the past records of the accused must not be used as evidence or indicator to prosecute him/her.

2. Presenting the case of the public prosecution in front of courts. When a court decides the date for the hearing of the case, the Public Prosecutor must attend and present the case of the prosecution.

The presentation and representation are based on the evidence gathered by the crime control and/or the investigations carried out by the investigators: and the responsibilities specified in Article 190 of the IPPS Act.

In case of using the evidence gathered by the Crime Control, the public prosecution must approve their investigation and determine the criminal acts and the specific offence committed as well as the sentence pursued by the prosecution. If the investigations were carried out by the investigator, the public prosecutor relies on the prosecution decision on the evidences, the offence and the punishment sought. He must present the case at court on this basis and defend it.

3. The public prosecution is also responsible for responding to the defence of the defendants and/or their representatives. These responsibilities are entrusted to the public prosecution by Article 192 of the IPPS Act. It has directed that the public prosecutor and his representative must be reasonable and just in carrying out their duties. However, according to Article 193 of the Act, if during the court proceedings, some evidence that would guarantee the acquittal of the accused becomes available, the public prosecution does not have the right to ask for the acquittal of the accused. Hence, he must leave the matter for the court to decide. He must also not petition the court for mercy in respect of the accused.

4. The Public Prosecution is also in charge of lodging appeals against sentences or acquittals that they are not satisfied with or think that they were inadequate. As the public prosecutor represents one of the parties in court, he has the right to appeal against judgement made by court. He should therefore assume this role whether the case is one regarding a public right or an individual victim.

In assuming his responsibilities of appealing against ruling by legal courts, sharia courts and committees, the public prosecutor must observe the general procedures of appeals including the timing of the appeal and the manner in which it is lodged.

Divisions and Jurisdiction of the Sharia Courts

1. The Higher Council of the Judiciary
2. The Appeal Court
3. The General Courts
4. The Courts Of General Jurisdiction

1. The Higher Council of the Judiciary (HCJ)

The Judiciary Law which was issued on 1975 specified the names and the positions of courts in the country. The HCJ and its permanent committee replace the High Judiciary Committee.

The HCJ consists of 11 members. These members are as follows:

- A. Five full members with the grade of a head of an appeal court. These members are appointed by royal decree from the permanent committee of the Council. The head of the committee is appointed by a royal decree from within these members.
- B. Five non full members. These include the head of the appeal court and his deputy, the undersecretary of the Ministry of Justice, and three members chosen from among the longest serving heads of courts in Mecca, Medina, Riyadh, Jeddah, Damam and Jiezan. These members together with the five members mentioned in paragraph (A) above form the general committee of the council.

The committee is chaired by the Head of the Higher Council of the Judiciary.

The Jurisdictions of the HCJ

The HCJ supervises courts in accordance with the provisions of 'article 6' of the Judiciary Act (as amended by the Royal decree No: M/76 in 1975. In addition to the provisions of the act, the HCJ is responsible for:

1. Looking at issues that the Minister of Justice sees as requiring a judgement regarding the principle of their *Sharia* position.
2. Looking at matters that the ruler sees as necessary to be looked at by the Council.
3. Deciding on matters relating to the judiciary as instructed by the Minister of Justice.
4. Reviewing death, amputation and stoning sentences.

The Convening of the Council

The HCJ meets with its permanent committee of full members and chaired by its head or deputy in order to look at matters and sentences mentioned in paragraphs 2,3 and 4 of Article 8, except matters that the Minister of Justice decides should be looked into by the general committee of the council.

The general committee of the Council convenes with all its members chaired by the head of the HJC in order to look in to other matters. The meeting of the Council with all its permanent committee members is considered a quorum with a simple majority, except in cases of reviewing death, amputation and stoning sentences in which case all members must attend. If any of the members is absent, the Minister of Justice may appoint a full member to replace him. When the Council convenes with its general committee, the meeting is not considered a quorum unless all members are present. In case the absence of any of the members or if the matter under consideration is related to him or is one in which he has an interest he may be replaced by a member appointed by the Minister of Justice from the appeal court.

The decisions of the Council and its committees are made on the basis of absolute majority of the members of the committee.

The Appeal Court

The establishment of the Appeal Court (AC) in Saudi Arabia comes as the result of the evolution of the judiciary system. In the early years of the Kingdom, around 1965 the judicial system included a body known as the Judicial Monitoring Committee. When the Judicial system was centralised, through the introduction of the Judicial Centralisation Act 1936, the name of the committee was changed to the Sharia Reviewing Committee. This new committee was entrusted with looking in to appeals and on sentences on crimes of 'Huddud' and 'Qissas' (very serious crimes).

When the judiciary act was introduced in 1975, the name the Appeal Court was adopted. The new Appeal Court (AC) was based in the capital Riyadh, unlike the previous two committees which were based in Mecca and Riyadh. However the situation remains the same in the sense that there were two appeal courts in Mecca and Riyadh.

The Structure of the Appeal Court

The AC consists of the chairman and a sufficient number of judges from the deputies of the chairman. These are appointed according to length of service and as necessity requires. The AC consists of a unit that deals with punishment cases, a unit that looks into personal affairs cases and a third that looks into other matters. Each of these units is headed by one of the deputies. These units may be expanded if necessity arises.

Although the law emphasised that the base of the AC court should be in Riyadh, the court may be convened for all or part of its sessions in other cities if the general committee decides to do so. The AC may also decide to establish branches in other cities.

The Jurisdiction of the AC

The AC has a jurisdiction to look into appeals against cases decided on by the general courts or by the courts of summary jurisdiction. The sentences that are subject to appeals are set in the procedures of the Sharia sentence appeal which was introduced by the royal approval No: 24836 on 29/10/1966. Article 3 of this royal approval states that the following sentences are not subject to appeal by the AC:

- A. Any sentence that was reviewed by the head of the judiciary or decided on its appeal position
- B. Any sentence that the person against whom it was issued is satisfied with
- C. Any sentence that had not been prepared before a judge within 30 days of the sentence being communicated to the accused. This period was initially 15 days but amended by the Council of Ministers decision on 01/04/1989
- D. Any sentence issued before the establishment of the AC on 01/04/1961.
- E. If the sentence was not more than 500 Riyals or its equivalent. However cases of estate properties can be appealed even if the value is not more than 500 Riyals.
- F. If the sentence was "Taziez" for not more than 40 lashes or 10 days imprisonment. If the "Taiez" sentence is for more than 40 lashes, or 10 days in prison then the sentence must be presented to the AC for general consideration whether the sentenced person is satisfied with it or not. In such cases, the acceptance of the Attorney General is irrelevant.

Given the above exceptions, Article 4 gives the head of the judiciary the power to order the appeal against any sentence where he deems it necessary. Moreover, Article 8 states that if the sentence was against an agent (agent of the Islamic state, a guardian or treasurer of fund), the court must raise the matter to the AC for review, whatever the sentence was.

The General Committee of the AC

The responsibility of the Appeal Court is to review the sentences issued by the General Court and the County Court that are presented before it. It does so in order to ensure that these courts have strictly followed the law and that the sentence has not contradicted the *Sharia*. Since there are many court units within the AC, the Judiciary Act stated that the general committee for the Appeal Court should standardise court practices. The members of the general committee of the AC consist of all the judges working in the courts. The Judiciary Act also states that "If any of the units of the court decides that it needed to overrule a principle of a judgement (*Ijtihad*) that it or any other unit had adopted in a similar previous matter, it must refer the matter to general committee of the AC for consideration. The decision of the committee must carry the views of a majority of not less than 2/3 of its members. If such a majority was not achieved, the matter must be referred to the HCJ to decide on the bases of paragraph 1 of article 8." (Alsholhoob, 2000).

The Act also states that the general committee of the Appeal Court may convene to:

- A. Arrange the establishment of new units and decide their responsibilities.
- B. Look into matters assigned to them according the Judiciary Act and any other act.

The general committee convenes under the leadership of the chairman of the court. In case the chairman is not available or his post becomes vacant, the session shall be chaired by the longest serving member. The meetings of the committee are called for by the chairman, his deputy or if at least three members requested a meeting (Alsholhoob, 2000).

The meeting of the committee is not considered a quorum unless attended by two thirds of the court judges. If those present are fewer than that, a second call for a

meeting shall be made and in this case, the presence of half the number of judges is considered as quorum.

Without violating article 14, the decision of the committee is made on the basis of a simple majority of the members present. In case the number for and against a decision is the same, the side on which the chairman votes should prevail.

The decisions of the general committee are considered final after their approval by the Minister of Justice. If the minister did not approve them, they must be referred back to the committee for reconsideration. If the second deliberation fails to reach a decision that is approved by the Minister of Justice, the matter must be referred to the Higher Council of the Judiciary. According to Article 20 of the Judiciary Act, the decision of the HCJ on the matter is final.

The law also states that the discussions of the general committee must be recorded in a special minute's book and signed by the chairman and the secretary.

Appeal courts are presided over by three judges, except in cases of death penalty, stoning and amputation where five judges must set to decide the matter.

The General Courts

The General Court (GC) consists of one or more judges and its establishment, responsibilities and venue are determined by a decision from the Minister of Justice based on the recommendation of the HCJ. The sentence of the GC are made by one judge except in case of the death penalty, stoning, amputation and other matters determined by the Act which must be made by three judges.

The Jurisdiction of the GCs

The GCs have the jurisdictions to look into disputes that fall outside the jurisdictions of the Courts of Summary Jurisdiction.

The Courts of Summary Jurisdiction (CSJ)

The CSJ consist of one, or more judge and its establishment, responsibilities and venues are determined by the Minister of Justice based on the recommendations of the HCJ. The decisions of the CSJ are made by one judge.

The Jurisdiction of the CSJ

The jurisdiction of the CSJ is determined by the Minister of Justice (Decision No 14/2/T on 20/01/1397), which was based on the decision of the HCJ(No. 299) on 22/11/1396 which was attached with the Royal letter No. 47/384 on 06.01/1977. The Ministers' decision states the CSJ jurisdiction as follows:

1. The first level CSJ looks into all cases of deviance, Tazir and Hudd of Sukur (i.e. drinking alcohol) and into criminal cases whose sentences do not exceed one fifth of the value of blood money (Diyyah).
2. The second level CSJ looks into all financial matters with a value that does not exceed 8.000 Riyals with the exception of matters relating to marital affairs (e.g. Provision for wife and children etc) and real estate.
3. The Summary (Rapid) Courts look into all matters that fall within the jurisdictions of the first level and second level court in an area where there are no more than one Summary (Rapid) court.

The Public Complaints Chamber in Saudi Arabia

A public complaints and grievance systems has existed in the Kingdom of Saudi Arabia since the year 1926. Umm al-Qura newspaper published a declaration from the King to all the people in the Kingdom that whoever has a grievance or complaint

against any person or official-whether of junior or high ranking- must present it directly to the King by placing it in a special Box placed at the government building.

In setting up this system of public complaints, however, many safeguards were put in place in order to ensure the genuineness of the complaints and to protect individuals from unfounded complaints and made-up grievances.

Following the development of the judicial system in the country and the expansion of its units and in order to cope with the overall advancement in the KSA, Article 17 of the Law of the Council of Ministers in 1953 ordered the establishment of a general department within the Council of Ministers known as the Complaints Chamber(CC). The Head of this CC is appointed by a Royal Decree and he deals with the King directly. The King is the ultimate authority to whom the matters of the Chamber are referred.

In 17/09/1954, the Complaints Chamber Act was issued by the Decree No. 2/13/8759. Article 1 of the Act, states that “an independent chamber shall be established under the name of the Complaints Chamber. This Chamber shall be headed by a person with the rank of a minister, and he must be appointed by a Royal Decree and should be accountable to His Royal Highness... His highness is the highest reference for it” Article 2 of the Act provided for the appointment of a sufficient number of consultants, officials, investigators, administrators and clerks.

On 01/11/1959, the Head of the CC issued a decision that set the basis of the internal organisation of the CC. The work of the CC was further reviewed and improved by the Royal Decree No. M/51 dated 17/07/1981. In 1970, the Council of Ministers reviewed the procedures of the CC and issued it decision No. 190 on 16/11/1980 which sets the principles and rules on which complaints may be raised, heard, dealt with and decided upon. The decision also sets the procedure to be followed in case of any objections on

the rule of the CC. The procedures and responsibilities of the CC were also reviewed and improved in 1992.

The Judicial Status of the CC

As we stated earlier, the new Act of the CC was introduced by the Royal Decree No. M//51 of 1982. Article 1 of the Act states that the CC is an administrative authority. If the CC becomes a judiciary authority, the investigation must be heard by another body, since one authority can not combine the roles of investigation and the judiciary.

According to the Royal Decree No. 2/12/1979 issued on 17/09/1954, the CC is responsible for the investigation of matters that are presented before it. The Act has specified the body that carries out the investigations to which all matters under consideration by the CC must be referred. Article 2 of the Act states that:

“the Monitoring and Investigation Committee shall, in addition to its responsibilities, assume the role of investigating crimes relating to bribery, forgery and the crimes listed by Decree No. 43 of 24/11/1377” (Alahmari, 1997).

Article 3 of the Act states that “It shall be referred to the Monitoring and Investigation Committee, cases that are under investigation by the Complaints Chamber, and those on which investigation were completed but were not presented to the Judgement body for consideration. Investigators who carry out these investigations in the Complaints Chamber shall be transferred to the Monitoring and Investigation body and accepted by it. The investigators who are to be transferred should be determined by the Head of the Chamber and the Head of the Committee” (Alahmari, 1997).

The Criminal Law Aspects of the CC

Although the CC is an administrative judicial body, it has been entrusted with looking into some criminal matters. Article 8 of the CC Act made some exceptions to the jurisdictions of the General Courts in some criminal matters these include:

“punishable allegations against defendants accused of crimes of forgery and fraud which are listed in the Act and crimes in the Royal Decree No 43 dated 29/11/1377 and crimes included in the Public Fund Dealing which are stated in the Royal Decree No 77 of 23/10/1395 and punishable allegations against defendants accused of committing crimes and offences included in the Act (if the Head of the Council of Ministers decided to refer them to the Chamber)” (Alahmari, 1997).

Since the CC is an administrative judicial body, as we have stated earlier, the Explanatory Memo of the CC Act explains that the punishment responsibilities of the CC are temporary until necessary arrangements are made for the courts to decide on these cases in accordance with the Judicial Act.

Accusations are considered and decided upon by the relevant units. Each unit consists of a Head and two members. However, the Head of the CC may set branch units from one member in order to look into ‘simple’ matters and allegations. The sessions of those units are not considered a quorum without the presence of all its members and the representative of the prosecution (in case of punishable accusations). If the number present was not a quorum, delegates may be appointed to make a quorum. Furthermore, the CC Act indicated that the clerk of Session must also be present.

Conclusion

This chapter examines the criminal justice system in Saudi Arabia. Firstly, it explains the organisation of the police (Public Security). The Crime Management Department is responsible for the prevention of crimes, the Crime Control Department is responsible

for the supervision of criminal investigation service, the Forensic Evidence Department is responsible for technical procedure to solve crimes, and the Civil Rights Department is responsible for addressing and investigating civil suits and disputes and referring them to the judiciary. Other departments include the General Traffic Department, General Department of Combating Drugs and General Department of Prisons. Secondly, this chapter explains the Public Prosecution Services. Finally, it explains the divisions and jurisdictions of the Sharia courts.

The history of pre-trial in England and Wales and pre-trial procedures in Sharia law will be examined in the next two chapters.

CHAPTER THREE: THE HISTORY OF PRE-TRIAL PROCEDURES IN ENGLAND AND WALES

- **History**
- **Underlying Principles**
- **Crime Control and Due Process**

THE HISTORY OF PRE-TRIAL IN ENGLAND AND WALES

This chapter examines the history of police powers in England and Wales, the purpose of police powers and how they related to crime control and due process

Introduction

Before the Police and Criminal Evidence Act, 1984 (PACE), police powers in England and Wales were a conflicting and uncertain patchwork of common law, Acts of Parliament, and local legislation. For instance, legal authority to stop and search was provided in some towns, but not in others (Dixon et al., 1989). The other powers such as detention of suspects for interviewing were unclear (Dixon, 1991).

In critical accounts, PACE is presented as a prominent feature of the ideological and instrumental expansion of law and order in the period following the 1979 election. Along with the Public Order Act 1986 and anti-terrorism and employment legislation, PACE 'consolidated and personified the Thatcherite programme within the law' (Scruton, 1987). This insight is hardly surprising, given the government's trumpeting of its promise to support the police. PACE really increased police powers, principally by expanding discretion (Scruton, 1987).

In 1981, the Royal Commission on Criminal Procedure (the Philips Commission) originally set up because of the wrongful conviction of three youths for the murder of Maxwell Confait, published its plan for a fair, open, workable and efficient system. It recommended that there should be a 'fundamental balance' in criminal justice between the police powers and the rights of suspects. Although not all of its proposals were accepted, the report of the Philips Commission led to the passing of the Police and Criminal Evidence Act 1984 (PACE) and the Prosecution of Offences Act 1985 (Sanders and Young, 2000).

PACE provides power to stop and search for a variety of purposes, subject to the precondition of reasonable suspicion. Various powers to search premises and seize property are given. Arrest powers are codified. Most important, PACE provides clearly defined powers of lengthy pre-charge detention and questioning. Several safeguards qualify these. Detention is subject to time limits and review, and it is also to be supervised by a Custody Officer who should be independent of the investigation and responsible for the suspect's welfare. The custody officer must inform detained suspects that they have various rights, among which most important is that of free legal advice. Legal advisers may consult with suspects before they are questioned, and may attend interrogations. Interrogation is to be recorded, and it is now usually done on audiotape (Dixon, 1992).

A variety of provisions are products of regulatory strategy, which was developed from the Report of the Royal Commission on Criminal Procedure (RCCP, 1981). Dixon argued that this strategy has various elements. First, an attempt is made to clarify and codify police powers and suspects rights, putting into legal form practices, which were previously governed largely by convention and the toothless Judges' Rules. As well as the familiar type of rules found in parliamentary legislation, there are five Codes of Practice (regulating stop and search, search of premises, detention and questioning, identification procedures and type recording of interviews). Second, managerial and supervisory controls are employed. The use of various powers requires authorization: for example, pre-charge detention beyond six hours must be authorized by an inspector, beyond twenty-four hours by a superintendent, and beyond thirty-six by a magistrates' court. The custody officer's specific responsibility for supervising a suspect's detention is made clear by statutory.

The origins of PACE were not just in the dual pressure for police powers and suspects rights, but in addition a concern for renovation and explanation of the law. One product of the largely unregulated conditions of pre-PACE detention and questioning of suspects was

incompetence in criminal justice as suspects and defendants gradually more challenged police actions in the court. At times, alleged confessions were contested so regularly that the utility of confessional evidence could be doubted and court delays were seen as a real problem (Dixon, 1992). Therefore, codification and clarification (of both police powers and suspects' rights) could be seen as being in the system's interest.

It has been argued that "law reform" has been largely a matter of empowering the police in relation to the suspect and that PACE is simply a development of police power and discretion (McConville et al., 1991).

However, there was a failure to value the true extent of police powers before PACE, pre-charge detention was subject to the vaguest of limits in serious cases (Dixon, 1991). The result could be seen in rare exposures in court, in which a suspect was held without charge and interrogated for eight days, during which he was refused access to legal advice and police lied to him about other evidence which they claimed to have. This may have been exceptional treatment reserved for 'professional criminals' who, according to the judge, could not expect to be treated with kid gloves. Perhaps more common was the behavior reported in Holmes, where a suspect was detained for two days without charge (McConville et al., 1991).

In this way, PACE limited rather than extended the power and discretion of the police (Baldwin, 1985). The effect of PACE on detention lengths vary and the average increased (Bottomley et al., 1991; Morgan et al., 1990). However, this was largely a result of bureaucratic delays such as waiting for legal advisors. Detention in more serious and complicated cases is shorter than before.

The specific source of the problem here is the lack of historical research on the practice of criminal procedures in the pre-PACE twentieth century. Almost nothing of value has been written. More generally, problems stem from an account of post war policing. According to

this, police public relations reached a high point in the postwar decades, before beginning a spiral downwards from 1960s through today (Reiner, 1985).

What is police power for?

The answer to this question could be simplistic. For instance, it is said that the power of arrest is the process of bringing suspected offenders before the courts to be tried (Devlin, 1960). The reality of arrest in policing practice is rather different. As the American Bar Foundation's survey and subsequent research have shown, arrest serves a number of other functions: people are taken into custody to conduct further investigations; to preserve testimony and for safe keeping (Goldstein 1993). Arrest also allows officers to establish authority, collect information and ensure self protection (Dixon et al. 1989: 189-90; Milner, 1974; Wilson 1986).

This provides a way of understanding disputes about powers associated with public-order offences. Egger and Findlay (1988) assert that those who argue that offensive language should not be an arrestable offence (as it is in New South Wales) on the grounds that a summons will usually be appropriate overlook the ways in which police use such as a charge. Often, this is not to respond to an offence. Rather, an offensive language charge is a method of control, a justification for removing a person from a public place. This is particularly the case when the victim of the offensive language is a police officer. Public order law provides clear examples of the breadth of police discretion (Dixon, 1997).

Chatterton (1976) has argued that we should suspend 'the conventional idea that laws are things to be enforced' and think of them instead as resources to be used to achieve the ends of those who are entitled or able to use them. These ends include resolving trouble, restoring public order, getting a suspect into custody so that other possible charges can be investigated, and punishing the guilty (Bittner, 1990). It is significant to stress that this

perspective requires abandoning the mythology in which crime-fighting is the sole police function (Dixon, 1997).

Historically, stop and search has been used not just to investigate those suspected (reasonably or not) of having committed offences, but as a more general technique of social surveillance and discipline checking on people whose appearance is incongruous because, for instance, they appear to be in an inappropriate place at an inappropriate time (young people in a commercial area at night). The use of such power is justified as contributing to crime detection (even if only some 12 per cent of officially recorded stop lead to arrests: Home Office, 1996: table 1), to information gathering (particularly in the case of stops for suspected illegal drugs), and to crime prevention (deterrent stop and search is an important, if often unrecognized, part of a beat officer's activities). But these are only part of a more general use of a power for purposes of social surveillance and discipline (Dixon et al. 1989).

The case of stop and search is a good example of how excessive use of police power can be dysfunctional or counterproductive. The main precondition of the 1981 Brixton riots was the intensive use of stop and search powers which worsened relations between police and young black people. The result was rioting and the commission of many serious offences (Scarman 1981). Similar results have been produced by other instances of intensively using stop and search or field interrogation in an aggressive patrol strategy. Studies in the United States and in England suggest that the level of some crimes may be reduced, but the price in alienation of some sections of the public (primary young, especially blacks) is very high (Reiner, 1992). The lesson to be learned is that any possible benefits which police powers may provide can be dissipated if they are used unsuitably. This is particularly significant, given police reliance on information from the public in crime detection.

Scarman's discussion of stop and search powers in his Brixton report insisted that police powers cannot be considered in isolation from their use or from the broader context of police duties and responsibilities. In an analysis which has been influential, Scarman (1981) argued that the primary police duty is the maintenance of social order. Enforcing the law is a secondary duty. It may be a means of achieving the former, but on occasions 'law enforcement puts at risk public tranquility and can cause acute friction and division in a community'. When a conflict between the duties arises, the preservation of order must take priority. This is achieved by the use of the discretion which lies at the heart of the policing function. The significant link which Scarman makes is to stress that the balance between law enforcement and order preservation will only be achieved when another, that between police and independence and responsibility, is successfully made. This balance in turn depends upon the police securing the consent of the communities in which they work. Scarman's report shown clearly the indissoluble links between police powers, discretion, and responsibility.

Although stop and search attracted most attention in debates about policing in the early 1980s, Dixon (1992) argued that the central issue (in both England and Wales and Australia) in the late 1990s is interrogation. From a legalistic perspective, the central purpose of police powers to detain for questioning is the collection of evidence for potential use in court. A more socially realistic perspective suggests that the division between investigation and judicial function is too neat. Criminal justice systems which depend on very high rates of guilty pleas for their effective functioning have transferred the crucial site of determination from the court to the police station. When cases may be effectively determined by a confession, then a power to detain and question is more, in practice if not in law, than an investigative power.

May seem that providing new police powers by legal change means extending police power. This may not be the case, and one effect of legislating on police powers may be to control police power. This inconsistent result may be produced when police have developed informal practices such as relying on consent in order to search or detain for questioning, or when more clearly coercive unlawful practices are not challenged in court, or when legal powers are used unsuitably, for instant, when stop and search is carried out without reasonable suspicion. If a legislature provides formal legal powers, these may authorize less than what was previously common practice. The demonstrate effects of attempts in PACE to regulate detention for questioning and stop and search illustrate again the inseparability of law and practice (Bottomley et al. 1991).

Crime control and due process

The English criminal justice system is usually characterized as one which emphasizes adversarial procedures and due process safeguards. In terms of the formal structure we can observe these safeguards intensifying as a person's liberty is increasingly guarded.

The least constraining exercise of police power is simple questioning on the street of someone who is merely a citizen, not a suspect. Since the questions are not aimed at incriminating the individual no due process protections are needed, but no force can be exercised either. The police are here in a fact finding or inquisitorial mode (Sanders, (2000).

If the police have any reason to suspect the individual, an 'adversarial' relationship is formed; the citizen becomes a suspect. The police now have the task of collecting evidence of what they believe the suspect has done so that this can be proven to the satisfaction of the courts. To assist them in this task, the law provides them with various powers and, in order to guard against the misuse of these powers, due process protections begin. Only if

there is 'reasonable suspicion' can coercive powers be exercised to search or to arrest a suspect. On arrest, the suspect is generally taken to a police station and detained. This requires further due process justification because civil liberties are further eroded by detention and its associated procedures such as interrogation, search of the suspect's home, and fingerprinting. Only if the detention is adjudged to be necessary can it be authorized. If detention is authorized, further forms of due process protection come into play, such as the right to legal advice, a right not to be held incommunicado and other procedural safeguards. In order to charge and prosecute a detainee, further evidence is required and further protections are provided vetting of the case by the Crown Prosecution Service and a grant of legal aid to prepare a defence. In order to convict there must be yet more evidence (proof beyond a reasonable doubt) (Packer, 1968).

At each stage, as a citizen becomes in turn a suspect, a detainee, an accused, and a defendant, the due process requirements become more stringent. This is in accordance with Packer's portrayal of due process as an obstacle course, with each successive stage presenting formidable impediments to carrying the citizen any further along the process. This should mean that few factually innocent persons are found legally guilty, or are carried too far down the course, but it will also mean that many factually guilty persons will be ejected from the system for lack of the required standard of evidence.

If we look at the way the system actually operates, however, it displays certain features characteristic of a crime control model. Decisions to arrest and stop-search are often made by police instinct rather than reasonable suspicion; detention for the purpose of obtaining a confession is routinely and uniformly authorized, and incentives to plead guilty (such as sentence discounts) are routinely offered to suspects (McConville et al., 1991).

Sanders (2000) argued that the great majority (over 90 per cent) of defendants whose cases proceed to trial plead guilty and forego their rights to initiate an adversarial battle.

The prosecution evidence is not tested, and 'proof' beyond reasonable doubt is constituted by the plea itself. The probability in such a system is that many more factually innocent persons will be convicted, than if the system actually operated in the formal manner described above. In Packer's descriptions, the system operates as a conveyor belt, moving suspects through a series of routinised procedures which lead, in the vast majority of those cases that reach court, to conviction.

Packer (1968) argued that the actual operation of the criminal process conformed closely to crime control, but that the law governing that process (as developed by the Supreme Court) expressed due process ideology. He identified a gap between the law in books and the law in action. But as Packer himself pointed out, it was perfectly possible for the Supreme Court to change tack and develop case law which expressed crime control values.

The question of where on the spectrum between crime control and due process English criminal justice is today to be located must, therefore, take account of both the formal law as laid down in statutes and case law, and the crucial operation of the system by officials operating within that legal framework. It is possible to make some evaluation of whether there is a need for more due process or more crime control. The crime control model assumes that the police are reliable fact-finders, whereas the due process model rests on quite the contrary assumption. If it could be established that the police were not particularly reliable fact-finders, then the argument in favour of more due process would be strengthened (Sanders and Young, 1994). On the other hand, if the evidence suggested that due process protections in a particular setting were thwarting the police from bringing most of the actually guilty to justice, the converse would be true (McBarnet et al., 1991).

It has been noted by Ashworth (1998) that the models pay insufficient attention to issues relating to the efficient management of resources and to the victims of crime. Ashworth's main reason for not adopting Packer's models in his own analysis of the criminal process,

however, is that they offer no way of definitively resolving conflicts in the criminal justice system between different sets of interests, such as those of suspects, victims, and society at large. He sets out to remedy this by seeking to establish ultimate principles and goals for the operation of criminal justice.

Conclusion

This chapter has examined the history of PACE including the principles and the due process and crime control. In 1981, the Royal Commission on Criminal Procedure (the Philips Commission) originally set up because of the wrongful conviction of three youths for the murder of Maxwell Confait, published its plan for a fair, open, workable and efficient system. It recommended that there should be a 'fundamental balance' in criminal justice between the police powers and the rights of suspects. Although not all of its proposals were accepted, the report of the Philips Commission led to the passing of the Police and Criminal Evidence Act 1984 (PACE) and the Prosecution of Offences Act 1985 (Sanders and Young, 2000).

The principles of pre-trial procedures in Sharia law are examined in the next chapter, and comparison made with the situation in England and Wales.

CHAPTER FOUR: PRE-TRIAL PROCEDURES IN SHARIA LAW

- **General Principles of Justice in Islam**
- **The Treatment of Suspect in Sharia Law**
- **The Rights of Suspect in Sharia Law**

PRE-TRIAL AND SUSPECT'S RIGHTS IN SHARIA LAW

This chapter has examines the pre-trial procedures in Sharia law. First, the chapter examines the general principles of the justice in Islam and the level of proof in the Sharia litigation. Secondly, the treatment with the suspects was examined and explained the rules of ordering the suspects to appear in the court, the powers to search and the powers to arrest. Thirdly, the chapter examines the suspect's rights in Sharia law and explains the rules of those rights. Finally, it makes a comparison between principles in Sharia law and England and Wales

Introduction

Respect for human rights in Criminal Litigation has been well enshrined in the Sharia Law since it was revealed in the seventh century. Many principles outlined in the Holy Quran, and the Prophetic Sayings (*Hadeeth*) affirm that human beings- men, women, believers and unbelievers- are honoured and respected. The assertion of respect for all human beings is derived from Islam's view of discipline, good attitudes and virtues as the *norm* in human behaviour, while misbehaving, transgressing and offending are the *exception*. Therefore, all human beings are honoured by Allah and human life is believed to be sacred (Awadh, 1980). According to the Holy Quran: *'We have honoured the sons of Adam (the Quran, 1996: Al-Isra'a: S.17 A. 70)'*¹.

General Principles of Justice in Islam

One of the implications of God's 'honour' for the Sons of Adam (i.e. all mankind) is that humans shall be treated with the utmost respect at all times and under all

¹ The translation of the meaning of these, and all other, Quranic verses, in this Chapter is taken from the Translation of the Holy Quran printed by: The Custodian of The Two Holy Mosques King Fahd (1996) Complex For the Printing of the Holy Quran, P.O. Box 3561, Al-Madinah Al-Munawarah, Saudi Arabia. References to the specific verses has followed the same pattern in this translation which uses the letter 'S'

circumstances. People shall therefore not be tortured, whether by causing physical or moral harm; and shall not be persecuted, ill-treated or humiliated. Another implication of God's honour for mankind is that all human beings are equal before the law and in criminal proceedings (Awadh, 1980).

The Holy Quran prohibits discrimination on racial grounds and states that:

'O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most Righteous of you (the quran(1996) Al-Hujurat: S.49 A.13).

The Prophet (SAW) upholds this principle and states that *'human beings are as equal as the teeth of a comb: no Arab person is preferred to a non-Arab and no white person is preferred to a black person, except for piety and good-deeds'* (Alzehely, 1975).

This equality of all human beings can and must be assured through the administration of justice. The Holy Quran says *'Allah commands justice, (and) the doing of good (An-Nahl S.16 A. 90)*. The Quran also says that *'... And when ye judge between people, that ye judge with justice (An-Nisaa: S. 4 A.58)*. The right to justice in Islam is an inalienable right guaranteed for all persons irrespective of their gender age or faith, and one that shall be observed under all circumstances and for all persons including enemies. The Holy Quran instructs *'O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from Justice (Al-Ma'ida: S.5 A.08)*.

As justice is administered in Sharia courts and by a *Qadi* (Judge), the person appointed as a *Qadi* in Islam must be known for piety and have a track record of

to refer to the number of the 'Suraha' (i.e Chapter) and the letter 'A' to refer to the number of the Ayah (i.e. Verse) :

integrity and honesty. Moreover, the *Qadi*- and hence the justice system- are independent and possess a superior power that is derived from the *Sharia* and guided by consciousness and virtues. But, as the principle in Islam is that all things are in origin permissible and allowed (*hallal*) unless they are declared prohibited (*harram*). Islam instructed that people shall be warned about what constitutes an offence before they can be punished for violating it. New laws can, therefore, not be applied retrospectively (Alswelem, 1988). The Holy Quran says *'I had already in advance sent you warning. The word changes not with Me, and I do not the least injustice to My Servants (Qaf: S.50 A.28, 29).*

The above stated principles were not just theoretical but were strictly put into practice by the Prophet and his companions. For example, when a woman from the noble tribe of Beni-Makhzoum stole and was brought to the Prophet's court, her family were concerned about the implications of her conviction for the reputations of their tribe. Hence, they elected Usama Ibn Zaid (one of the closest people to the Prophet) to intervene to request that she be pardoned and not have her hand cut off. The Prophet (SAW) vigorously refused to pardon her and declared publicly to his companions that *'nations before you had been ruined because they used to punish poor thieves amongst them and acquit thieves who are among the notables.* It was also reported that the *Khalive* Omar Ibn Al-Khatib had treated equally a Jewish man and the Prophet's cousin *Khalive* Ali Ibn Abu-Talib, when they came to his law court (Gardhawe, 1983).

Islam also emphasises that justice must not just be done, but it must also be seen to be done. Accordingly, it instructed that *Sharia* courts shall be held in a public place, which is open to the public without any entry restrictions. For example, the Prophet used to hold his court at the Mosque. Delayed justice is also considered as bad justice for the accused, the claimant and the community at large. Therefore, *Sharia* and court procedures shall be expeditious, successive and sequential (Ahmed, 1981).

The Burden and the Level of Proof in the Sharia Criminal Litigation

As stated earlier, one of the fundamental principles in Islam is that the basis and origin of things is acceptance and permissibility (*A'ddam*) unless they are declared otherwise (i.e. *harram* or an offence). This principle has wider implications on the burden of proof and level of proof in a Sharia court. Its first implications is that acceptable norms and attitudes are the normal and natural state of human behaviour and actions-and hence human life-, and criminal offences are divergent and 'exceptional' deviations from the 'norms' (Albyati, 1994). This means that innocence is a *yaqeen* (i.e. certainty) that can only be challenged and abrogated by another *yaqeen* that leaves no room for reasonable doubt. Evidence which is suspicious or doubtful shall be interpreted in favour of the accused as it strengthens rather than weakens the *status quo*. Hence, the level of proof for a conviction in a criminal case is one that establishes clear *yaqeen* that the accused's action is contrary to the default presumption of innocence. In other words, criminal offences are exceptions which have to be proved-beyond any reasonable doubt- by the Claimant in order for the *sharia* court to establish a *yaqeen* which is necessary to secure a criminal conviction.

The accused, moreover, has the right to be told about the allegations against him/her and the evidence presented by the prosecution in order to prepare a defence, and if desired, instruct a representative to defend him/her. Marzogy stressed that the allegations and evidences must be explained to the accused in a way and a language that s/he understands. Zofear states that in a Sharia court, the claimant has the weakest status of the two parties to the proceedings and the accused has the strongest status and therefore it is for the Claimant to prove his case. The evidence presented must be one which presents an alternative *yaqeen* that supersedes the *yaqeen* of innocence; otherwise

the accused shall be acquitted. *Imam Ali Ibn Abu-Talib* instructed that: *Do not repeal yaqeen(certainty) with doubt and maintain things at their status quo.*

The instructions emphasised by *Imam Ali* here and asserted by many scholars set out two of the most fundamental principles that: 1) *'yaqeen can not be repealed by doubt'* and 2) *the norm is that things remain as they were until they are proven to the contrary'*. These principles are well observed in the Sharia criminal system. One of the reflections of the observance of this principle is that accused persons are presumed innocent until they are proven guilty (*with yaqeen*).

According to the Sharia, the proof of the *yaqeen* of guilt lies with the claimant. The accused's position is stronger because he stands protected by the *yaqeen* of innocence and is not therefore obliged to prove his innocence. This proof of evidence shall be established in a court of law. The final decision of guilt or innocence shall be based on the evidence presented before the judge- in court – whether this concur with what the judge knew or thinks or what is considered as the 'actual truth'. The Prophet (SAW) has observed this principle and provided a moral safeguard against its abuse by stating in the *Hadeeth*

'I am only a human being and you come to (my court) with disputes, and some of you may be more articulate than others and I judge in their favour based on what I hear from them. So if my judgement gives someone what they are not entitled to, then what I have given them would be a piece of hellfire.(Altermanini, 1976).

Furthermore, in his assertion of the imperative of the presence of clear evidence before any charges can be brought against anyone, the Prophet stated that *'if I am to order the stoning (to death) of anybody without a established evidence, then I would have ordered the stoning (to death) of Mrs X the daughter of X because of what she appears to be and the people who call on hers'*. The Prophet also instructed other

Sharia judges to be very careful in their administration and dispensation of justice and to do their utmost in order to avoid convicting an innocent person. He states that:

‘Imams should rather mistakenly acquit (a criminal) than mistakenly convict (an innocent person) as justice is damaged by the punishment of an innocent person. This is because -the conviction of an innocent- has a greater damage as it results in the punishment of an innocent person as well as the escape of the actual criminal from justice. The result of the acquittal of a person, who has not been proven guilty with certainty, is that a guilty person has escaped justice (Alzehly, 1975)

Islam considers human life and a person’s properties and honour as something sacred that must be respected. Therefore, people have been given the right to defend these sacred things against any actual or imminent harm. This obviously includes protecting oneself and family against harm and ones home and other properties against harm and intrusion by others -including the police and other authorities (Wafi, 1998). The Holy Quran prohibited the intrusion in private property particularly occupied houses. In Surat An-nur, Allah (SWT) says:

‘O ye who believe! Enter not houses other than your own, until ye Asked permission and saluted those in them: that is best for you, in order that ye may heed (what is seemly). If ye find no one in the house, enter not until permission is given to you: if you are asked to go back, go back: that makes for greater purity for yourselves: and Allah knows well all that ye do. It is no fault on your part to enter houses not used for living in, which serve some (other) use for you (An-Nur: S.24 A. 27-29).

Zofear (2000) has argued that entry into a house without permission is acceptable in exceptional circumstances such as events of fire, drowning, earthquake and when a

crime is committed inside a house and rescue is called for or when the guardian of the house or his deputy offered their permission. Marzogy (2000) has further argued that entry into a private house is permitted to search for an escaped criminal or to apprehend a person committing crime on the premises. People also have the right to intervene and protect the lives or properties of others from harm, but this right is based on the general Islamic duty entrusted on all Muslims to 'call for virtues and good deeds and prevent evil and bad deeds'. The Prophet (SAW) states that:

'whoever amongst you sees an abominable act, s he should prevent and change it by his hand (i.e. take actions), if he couldn't, then his tongue (i.e. speak against it) if he couldn't then his heart (i.e. denounce it in his heart) and that is the least of the faith (Altermanini, 1976:p 63).

However spying is prohibited, even if it is undertaken by an official authority to catch a criminal or to secure a conviction. Allah (SWT) says '*And spy not on each other*' (*Al-Hujurat: S.49 A.12*). Imam Ibn Hazm Al-Zahiri indicates that:

'And whatever is not attained except with a 'haram'(prohibited) act, shall always be deemed 'haram'; and any act that is not attainable without involving an act that is prohibited shall be deemed as always impermissible: as disobedience(of God) can not alternate obedience.

This implies that if a crime has been proven through the use of illegal act that involve committing a *haram* act, then as the means used to obtain the evidence is *haram* then the evidence itself is inadmissible (Alshawi, 1954).

Treatment of the Suspect

When charges are brought against someone, then this implies his appearance before a judge who will hear the case and issue a judgement. It cannot be assumed that an accused person will report to a court, just upon being charged, as he may not be aware

of what he is charged with. Therefore, he must be ordered to appear before a judge and informed about the charges he is facing. If the accused appears before a judge voluntarily then the judge hears the case. If he does not, then the judge shall issue the appropriate order to enforce his appearance in a court. This can be done in either of two ways: by issuing a summons for the accused to appear in a court or by forcibly bringing him/her to court (Alwani, 1982).

The Islamic Sharia system has two ways of administering court procedures and the appearance of the parties before a judge. The first is that the Claimant may invite the suspect to court, and the second is that the judge can summon the Accused to appear before him (Murad, 1989).

1. The Claimant inviting the Suspect to Court

According to the Sharia, if two persons have a dispute and one of them invites the other to a Sharia court, then the latter is obliged to accept the invitation and follow him to a Sharia court (Gaid, 1994). The Holy Quran says:

'When they are summoned to Allah and His Messenger, in order that he may judge between them, behold, some of them decline (to come). But if the right is on their side, they come to him with all submission. Is it that there is a disease in their hearts? Or do they doubt, or are they in fear, that Allah and his Messenger will deal unjustly with them? Nay it is they themselves who do wrong. The answer of the Believers, when summoned to Allah and His Messenger, in order that he may judge between them, is no other than them: they say 'We hear and we obey' (An-Nur: S.24 A.48-51).

In the above verses, Allah the Almighty has explicitly condemned those who refuse to accept the Sharia justice by refusing to appear before a Sharia Court when they are requested to do so. This indicates that accepting an invitation, request or order to appear before a Sharia court is an obligatory duty, and that those who do not observe it are

condemned by Allah unless they have compelling excuse that prevents them from doing so, such as illness.

If an accused is asked to appear before a Sharia judge, then it becomes obligatory on him to do so without delay. Gaid (1994) stated that the accused need not appear before a court if there is no dispute between him and the claimant or if the dispute is one that can be resolved without the intervention of the authorities, such as debt that the accused is able and prepared to repay. This is because what is important in these circumstances is honouring the debt (or other obligation) rather than appearing before a judge, and if the accused meets his/ her obligations to the other party then the dispute is over.

Gardhawe (1983) has also indicated that the accused must not appear before a judge if he knows that the judge will judge him unjustly based on the apparent argument. S he has the right, between him/her self and Allah, not to appear, especially if the matter in question is a serious one such as grievous bodily harm, a *hudood crime* (serious crimes), or adultery. Awadh (1980) indicated that in such circumstances, the appearance of the accused in the court is prohibited.

2. The Judge Order for the suspect to Appear in Court

It may happen that the accused fails to accept the invitation by the claimant to appear in a court, and a judge's order is issued to request him/her to appear in court. Scholars state that there are two scenarios in such case: either the accused is present in the same town of the judge; or he is absent from it (Gbealy, 1998).

There are two views on what must be done in the case where the accused is present at the same town as the judge. Some *Malikia* scholars say that the judge shall not order the accused to attend unless he knows that there were some dealings or an encounter between the suspect and the claimant. These views were reported in the *Mazhab* of Imam Ahmed and were endorsed by Imam Ali Ibn Abu-Talib. The scholars who support this view base their argument on the need to make some restrictions and

conditions in order to protect the community from the potential abuse by some who may be interested in disrupting people by calling them to appear in court to face unfounded accusations (Harjah, 1995).

Other scholars indicate that the judge must order the accused to appear before a court whether he knows of some dealings or an encounter between him/her and the claimant or not. Those who opt for this view argue that, despite the risks involved, not ordering the accused to appear may result in greater harm as it may lead to breach of justice or endorsement of injustice which is greater harm than ordering the appearance of a person who may be innocent. They also argue that there are some cases such as crimes of self-harm where it is not necessary for an encounter or some sort of dealing with another person to have occurred for an offence to have taken place. This point of view is adopted by the *Hannafia* and *Shafiaia*. It was also adopted by the honourable Khalive Omar Ibn Al-Khatab and reported in a version of the Mazhab of Imam Ahmed (Zfear, 2000).

3. Forcing the Suspect to Appear in Court

If the accused fails to appear before a judge when s/he is ordered to do so, or if he/she absconds and his/her whereabouts become known, then the judge is obliged to force him/her to appear in court and not to escape justice and deny other persons their legitimate rights.

Oleyan (1982) indicated that if an accused fails to respond to an order to appear in court, then the judge shall send someone to his house to call him to appear in court in person or ask someone to come on his behalf or give an acceptable excuse for his failure to appear. They shall be warned that if they or their representative fail to respond to the court order within three days, their house will either be locked or sealed. If three days passed without any response then the court shall seal or lock the accused's house on the claimant's request. Ahmed (1981) stated that a guard should be placed in front of

accused's house to prevent him/her leaving the house and prevent anything other than food and drinks from entering the house, in order to force the accused to appear in court. There are two points of views with regard to what to do with an accused who fails to appear in court after these actions were under taken.

Zofear argued that the accused house must not be raided as this will amount to a breach of his honour and his right of privacy. However, Gardhawe stated that the accused's house shall be raided and s/he shall be forced to appear in court. The scholars who take this view support it by referring to two cases. In the first case, it was narrated that Imam Omar Ibn Al-Khatab was informed about two men (one from Quraish tribe and the other from Thuqaif tribe) who had alcohol in their houses and he raided the two houses. He found alcohol in the house of the man from Thuqaif and prosecuted him and left the Quraish man go free as no evidence was found in his house. In the second case, it was reported that Imam Ali Ibn Abi-Talib was once collecting taxes from Al-Raya through his agent Abdulrahman Ibn Mukhanaf. Abdulrahman took it and hid in the house of Naim Ibn Duqaqa Al-Assdi. Imam Ali sent some people to enter the house and arrest him. These two incidents outlined by two prominent Islamic scholars are taken as a strong support for a legal precedent that house raids and arrest of accused persons who try to escape from justice are allowed.

The Manner of House Raids

Having allowed forcible arrest and house raids for the sake and interest of justice, Islamic scholars were concerned about the manner in which this can be carried out without breaching the humanity and the Sharia rights of the accused or other persons associated with him/her. They wanted to make sure that the arrest of the runaway accused would not lead to a breach of any human rights granted by the Sharia. One provision made to avoid this is that search and arrest warrants must be issued by a judge. It was

also instructed that the judge should send decent and trustworthy persons to carry out the raid and arrest, and they must be accompanied by young boys and trustworthy women. The women and young boys should enter the house while the other agents should wait at the door and around the house (to prevent the accused escaping). When the women and young boys reach the centre of the house, the other agents may enter the house. If the accused is not found immediately there the women and young boys should start searching the house. The women in the house must be searched by women. Some scholars have also instructed that the raid must be planned in secret and must not be publicised (Alswelem, 1988)

If the judge fails to carry out the arrest order, then he should seek the assistance of other authorities. When the accused is arrested, the judge should apply what he sees as the appropriate measures against him/her.

The above measures are followed against an accused person who either refuses to appear before a judge or who is hiding in a known place, such as his/her own home. In the circumstances where the accused is hiding in an unknown place, either in order to escape justice or because of fear, then it is the responsibility of the prosecution attorney, the police and other relevant authorities to search for him/her. If those authorities need the assistance and the cooperation of members of the public, they are allowed to enlist it. If the fugitive is known, then members of the public are allowed to carry out a citizen's arrest against him/her (Alswelem, 1988).

If the accused is caught red-handed or is seen trying to run away from the crime scene, such as a case in which an injured person is found bleeding and beside him/her there is a person with a bloodied knife, or a person is seen running away and was followed by people trying to catch him/her, then the relevant authorities must arrest the accused. If any member of the public can safely help in the arrest of such persons, then they have a duty to do so, under the Muslim's duty to 'call for virtue and prevent evil'. The Prophet

(SAW) is reported to have followed these procedures and commended them, as they are necessary to prevent criminals from escaping justice. However, the scholars have strongly reminded those undertaking any type of arrest to be extremely careful and not to act on mere suspicion or breach any honour or rights while trying to bring the accused to justice. A story that happened during the time of Imam Ali Ibn Abi-Talib and was narrated by Imam Ibn Al-Qaiem is often used as a good example that illustrates the rights of the authorities to undertake a forced arrest of accused and the need to be vigilant while doing so. Imam Ibn Al-Qiam narrated that ‘Imam Ali, once, found a man who was hiding a knife that was covered in blood standing beside a dead man who was killed. Imam Ali asked the man who was hiding the knife whether he killed the dead man and he said: ‘Yes I did’. The Imam ordered the guards to take him away and execute him. When they took him away for execution, another man came and requested them to take the ‘convicted man’ back to Imam Ali. When they returned, the other man confessed to the crime and Imam Ali asked the two men to explain why they had done what they did. The man who had initially been convicted of the murder explained that he had just killed a cow and while I was skinning it off, I felt that I needed to pass water and I walked with my knife towards this isolated place near my shop. When I reached the place where you found me I saw the dead man lying there. I was moved by that and I stood there looking at him, when your guards came and found me in that situation and everyone said ‘this man killed that man’. I felt that whatever I said would not be accepted as true and I surrendered myself for the sake of Allah and confessed to something that I had not done (Alzehly, 1975).

The other man who confessed explained that he was induced by Satan and killed the man for his money. He said, when I heard the steps of the guards, I tried to hide myself. I saw this man as he described I hid myself from him until guards came and arrested him. When you sentenced him to be executed, I felt that I would also be responsible

for the death of another man so I came and told the truth. The guards then arrested the murderer and freed the other man (Marzogy, 2000).

Searching the Suspect

The suspect is potentially the offender, and if so then he/she may try by any means possible to hide some evidence that may incriminate him/her. Therefore, the Sharia allowed the authorities to search the person or their property. Ibn Al-Qaim states that if the accused denies having any money and the claimant believes that s/he has some money on him/her, the authorities are allowed to search the accused. If the authorities believe that it is highly probable that the stolen money is hidden on the accused or in their house, then they will not breach the Sharia by ordering a personal or house search. In general, if the evidence of accusations is obvious and strong or if the accused is found in a suspicious place or a suspicious situation then the authorities have the right to search him/ her. However, if the evidence is not strong or the person is not an accused, his/her consent is needed before any search can be carried out (Marzogy, 2000).

The Arrest of the Suspect

The Definition of Arrest in the Sharia

According to the Sharia, arrest does not merely refer to the taking into custody of an individual and keeping in solitary confinement but extends to include the restriction of an individual's rights to move freely or do other things as s/he wishes. Therefore, for many scholars, arrest is synonymous with imprisonment (Alswellem, 1988).

The arrest of the accused is allowed according to the *Sharia* and there are many evidences in the Holy Quran, the *Sunnah*(Prophetic Traditions) and the consensus of the Scholars. Evidence that permits the arrest of the accused in the Holy Quran includes the following verses from Surat Al-Maidah:

'The punishment of those who wage war against Allah and his Messenger, and strive with might and main for mischief through the land is: execution or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land... (Al-Maidah: S.5 A. 33).

This verse refers to exile from land which means arrest as it impossible to exile anybody from land. If we take exile from land as moving the person concerned to another country or place this would bound to cause harm to its inhabitants. The legitimacy of arrest is also confirmed in the Prophetic traditions and practices. For example, in a *Hadeeth* Abu-Huraira reported that:

'the Prophet (SAW) once sent some of his agents to a place at the vicinity of Najd and they returned back with a man from Beni Haniefa called Thumama Ibn Athal and they tied him to a pole in the Mosque. When the Prophet (SAW) saw him he asked him: O Thamama what was the matter? He replied 'goodness Oh Mohamed, if you execute me then you execute a human with blood, if you pardon me then you pardon a thankful person, and if you need money then you will have whatever you ask for. The Prophet (SAW) left him until the following day and then repeated the same questions to him. He gave the same answer. The Prophet (SAW) left him until the day after and repeated the same questions to him. Thumamah gave the same answer and he Prophet (SAW) ordered him to be released' (Gardhawe, 1983).

In the above *Saheeh Hadeeth*, the Prophet (SAW) has endorsed the arrest of the said man for a period of three days during which interrogation was carried out, and when he was proven innocent, the Prophet ordered his release. In many other *Hadeeths*, the prophet is reported to have ordered the arrest of accused persons. The Companions were also reported to have arrested accused persons and this has been endorsed. (Gardhawe, 1983).

In general the principle behind the arrest of the accused is that it preserves law and order and protects the wider community from the potential harm of releasing the accused in the wider community. Therefore, although arrest involves restricting the freedom of an individual, it is considered as acceptable as it serves a higher purpose of protecting the wider community from a potential danger or harm.

How the arrest of the suspect carried out?

The Sharia scholars have disagreed as to whether a suspect person shall be arrested. There are three points of view on this matter. The first point of view, which is held by Ibn Hazm states, some of the Shafiya and a view in the Hanabela, states that the accused shall not be arrested. The second point of view, which is held by the Hanafia, states that the person accused of a *Hudood* or a *Qissas* crime shall be arrested, while persons accused of a civil offence or a censure (*tazeer*) punishable offence shall not be arrested. The third point of view, which is held by the '*Jamhoor*' (group of scholars) states that all accused can be arrested, irrespective of the nature of the offence they were accused of.

People who held the first view narrated that the Khalive Omar Ibn Al-Khatab had once denounced the arrest and handcuff of an accused man by his alleged victim and argued that if arrest was allowed, then it would not have been condemned by Khalive Omar. They have also relied on the logic of the general Islamic principle that the accused is innocent until it is proven otherwise, and if s/he is arrested then this represent a violation of the rights which is not allowed in Islam.

Awadh, on the other hand, supports his view that distinguishes between different kinds of offence by arguing that in the case of crimes against property and censure (*Ta'zeer*) offences, the maximum possible punishment, in case the accused is convicted, is imprisonment. Therefore if s/he was arrested as an accused, this would amount to imposing the maximum punishment, without a conviction. However, in the

case of persons accused of a *Hudood* crime, the maximum possible punishment in case of a conviction is a *Hud* (single of *Huddood*) or *gissas*, which is a more severe punishment than the arrest, and therefore the arrest in such a case shall be allowed.

The *Jamhour* have backed their stand on the right to arrest any accused by citing a number of legal precedents that took place during the time of the Prophet (SAW). In one of the cases cited, the Prophet (SAW) is reported to have arrested an accused man and in another case they cited an incident reported in the Hadeeth that one of the Companions of the Prophet (SAW) called Al-Numan Ibn Bashir is reported to have arrested a group of men who were accused of theft, held them for several days and then released them. When he was asked why he had arrested them, he said that was the judgement of the *Sharia* of Allah and his Messenger.

In general, Gardhawe (1983) and Oleyan (1982) accept that the arrest of the accused is permitted as it serves many interests. For example, it gives a chance for the authorities to question them. It also acts as a necessary precautionary measure to safeguard the community from the potential harm of some dangerous offenders. However, as the arrest of an accused is bound to violate the rights of some accused, it was instructed that a judge should look at the merit of each case and decide *if* and for *how long* to remand an accused person in custody.

The Period of Custody

As the arrest of an suspect, who is yet to be proven innocent or guilty, is a sensitive matter and one that is vulnerable to abuse by some persons who may intend to send their enemies or rivals to long period of custody; the Sharia scholars were concerned about blocking any loopholes in this area. One issue they thoroughly discussed was the duration of custody (Alzehly, 1975).

Awadh (1980) has distinguished between the accused based on what is known about their past history. If the accused is known to be a person who has committed evil and

corruption in the past, then some scholars argue that s/he should be detained for around a month, and if the evidences against him/her become stronger the detention can be prolonged. Other scholars indicated that s/he may be detained until s/he reports or dies.

If the accused past history is unknown, and then some scholars indicated that s/he should not be detained for a period longer than a month, after which s/he should either be charged or released. Alswelem (1988) argued that the matter should be left to the relevant authorities to decide. They recommended that detention should not be unnecessarily prolonged, but argue that limiting the period may undermine the purpose behind the arrest.

Who has the Right to Arrest?

Awadh (1980) has disagreed on who has the right to arrest and detain suspect persons. Some argue that the Governor (Ruler) as the person who is in charge of preventing evil on earth and suppressing those who commit evil should be the one who arrests, and not the judge who is merely in charge of establishing truth over disputes and dispensing rights and dues. On the other hand, Morzogy (2000) argued that both the judge and the Governor (Ruler) have the right to arrest accused persons. They consolidated these views by arguing that the responsibilities of the Governor and the Judge are rarely separate and in many case they intersect and overlap.

Oppression and Torture of the suspect

In the above sections we have alluded to the arrest of the accused persons and their rights during custody. The Sharia respects the presumption of the innocence of the accused and protects the rights of the accused whilst under arrest. However, if the evidence against the suspect becomes stronger and the findings of the investigation link them to the crime. Scholars have disagreed on whether the authorities have the right to use torture and oppression in order the discover the full truth about what had happened. While some scholars such as Asbagh (1970), Ibn Hazm (1960) and Al-Qazali (1971).

stated that the accused must never be torture or coerced, others such as the Jamhoor argue that the authorities have the right to torture the accused.

Zofer (2000) argued that Ibn Gaem, who prohibited the torture of the accused has presented a host of evidence from the time of the Prophet (SAW) that prohibits the torture and oppression of the accused. He cited a *Hadeeth* narrated in the *Sahihain* that the Prophet (SAW) once address the public and stated that ‘...*your blood, your property, your honour and your **Bashier** are sacred and haram(to be violated)*’. This speech clearly indicates that people’s lives, bodies and properties must not be violated without a legitimate right that is proven with certainty. Therefore, the authorities have no right to inflict any form of torture on the accused, whatever the aim is. In evidence, the scholars have cited a *Hadeeth* in which the Prophet says:

‘if I am to order the stoning (to death) of anybody without established evidence, then I would have ordered the stoning (to death) of Mrs X the daughter of X because of what she appears to be and the people who call on hers’.

The above *Hadeeth* indicates that rumours, whatever goes on the minds of individuals about others and however credible the suspicion against an accused person may seem, these are just accusations which may or may not be real. They are therefore not enough evidence to justify inflecting pain or torturing individuals who are just accused. This principle should be observed in all circumstances, including serious cases such as the adultery accusations, and only proven criminals shall be punished.

Awadh (1980) suggests that the torture of the accused has a potential benefit to the community as it may lead some real offenders to confess to their crimes. However, Alswalem (1988) argues against the torture of the accused, because although the torture of the accused may generate some benefit, it may also result in the punishment of an innocent person. For Alswalem the ‘potential’ benefit for the community and the criminal system is not in anyway superior to the risk of violation of the rights of an

innocent person. Imam Al-Ghazali argues that believing the claimant's account as truthful before a court hearing is unfair, as the claimant's account should also be treated as suspicious. Al-Ghazali also denounced the view that allows the torture of the accused because s/he had committed another crime in the past. He argues that even if the accused had been convicted in the past, he can not be punished again for a crime for which he has already received the appropriate punishment, nor can it be assumed that s/he is guilty of the said crime because s/he committed another in the past. Imam Al-Ghazali states that, despite the numerous criminal offences committed during the time of the Prophet and his Companions, they never punished or tortured an accused person based on allegations against them. They always relied on clear evidence, confession or oath (*Yameen*).

The Sharia has generally made the level of evidence in serious crimes such as the *Hudood* crimes very high. For example, to secure a conviction on an adultery crime, four honest persons must testify under oath that they have seen the act in full and graphic details. Although this made the conviction of people for this crime extremely difficult, but it was thought that the serious nature of the crime, its implications for the accused and its serious punishment, necessitate this high level of evidence that is necessary to establish a *yaqeen*.

Marzogy (2000) reports that those who argue for allowing the custody authorities to use coercive means and torture have also cited a number of cases to justify their point of view. For example the cited a *Hadeeth* narrated in the *Saheehain* which states that: *'the Prophet(SAW)once send Imam Ali, Al-Zubair and Al-maqdad and he said to them: travel until you reach a place called Rawdat Khakh and you will find a woman who has a letter(book) . Take this letter from her. We travelled on our horses until they reached the said place and we found a woman. We said to her: give us the letter and she replied*

that she did not have any book. We said to her: you either produce the book or we will search your cloths, so she produced the letter.

Awadh took this potential use of compulsion, by Imam Ali and his companions, as an evidence to support their views that endorse the torture of the suspect. *(Is this woman really a suspect? And was this verbal torture and oppression is the same as physical torture?)*

Who has the Right to Oppress or Coerce the suspect?

The scholars, for instance, Marzogy (2000) and Alwani (1982), who endorse the torture of accused persons, have all agreed on the right of the Governor (Ruler) to order it, but they have disagreed whether judges have the same right. However, as mentioned in relation to the right to arrest the accused, the soundest view is that both the Governor/Ruler and the judge have the right to order torture (Marzogy, 2000).

What Type of Offences Justify the Torture of the suspect?

The scholars who endorse the right to torture suspects have all agreed on the permissibility of torturing persons who are facing offences against other persons, such as murder and adultery and the like, but they disagree on whether persons accused with minor offences can also be tortured. Some scholars argue that persons accused of breaching the rights of Allah(SWT) can also be oppressed, similarly to those who are accused of crimes against other persons. However, Awadh suggested that those who are accused of violating Allah's rights shall not be oppressed if they have not done so openly and promoted it such violation among other people.

Is the use of Deception Allowed in Order to get to the Truth?

Tricking the accused by leading him or her to believe that something which is not true has happened in order to get them to confess to the truth is considered as acceptable, as it does not influence choice of the accused, as it has little influence on his/her will. It was therefore considered by many scholars as an acceptable and clever way means to reach the truth but its effectiveness depends on the level of intelligence of the accused. It was reported in the *Saheehain* and elsewhere that the Prophet (SAW) says that:

Sons. One of the two women said to the other: 'The fox has taken your son, and the other said'' It had actually took your son. The two women sought the judgement of Dawoud and he ruled that the baby belonged to the older women. They then went to Sulieman Ibn Dawoud and explained to him their dispute. He requested that a knife should be brought to him to divide the baby into two and give each one a piece. Then the young woman said: Please don't do it, May Allah offered you His mercy... the baby belongs to her. He then ruled that the baby belongs to the younger woman' (Marzogy, 2000).

In the above *Hadeeth*, Sulieman Ibn Dawoud was obviously not intending to divide the baby into two pieces but he was merely using the threat as a trick to get to the truth, which was hard to reach in this particular circumstance. In another case, the Prophet (SAW) had called on Ali Ibn Abi-Talib to kill a man that he did not intend to kill but wanted to test whether accused told the truth or not.

Scholars who support these views cited a story narrated by Imam Ibn Al-Ghaiem, as a clear evidence that the use of tricks is allowed. The story which took place during the era of Imam Ali says *'A young man once came to Ali Ibn Abi-Talib and said: My father had travelled with this group of people and when they returned, he was not among them. When I asked them about him, they responded that he had died. I asked them*

about his wealth and they said he left none although; my father had a lot of money with him. Ali ordered them to swear on the Quran (that they he had died and left no money) and ordered them to go. He then separated them and ordered two policemen to guard each of them and not to let anyone to talk to them or let them talk to each other. He then ordered his Clerk to come and asked one of them to be brought in the court. When he entered Ali said to him: tell me about the father of this young man, when did he leave with you? Where did you stop? How did you travel? What was the cause of his death? How did he lose his wealth? Who washed his body and who attended his burial? Who prayed on his body and where was he buried and so on and so forth.. The Clerk recorded everything said. When he finished, Ali shouted "Allah is Great" (a Jubilation word), and all those present repeated "Allah is Great". The other accused were outside heard the jubilations but didn't hear what their friend had said and thought that he had incriminated them.

Ali then called the other accused to come in and asked him the same questions and repeated the same with all the accused. He found out that each of them gave a conflicting account of what had happened. Ali then brought the first accused in and said to him: O you the enemy of Allah, I have found out about all your lies from what I have heard from your friends and you can only avoid punishment by telling the truth. He then ordered him to be imprisoned and he shouted 'Allah is Great' which was repeated by all those present. When his friend saw him they became convinced that their friend had confessed to evidence against them. Ali then asked another accused to enter and he threatened him. The accused said: O' the leader of the Believers I never agreed to what they have done. Ali then asked the rest one after the other and they all confessed and told the truth. He then called the first accused to come back and he told him: All your friends have now confessed and only the truth can make you escape. The man confessed

to all that his other friends had confessed. Ali then ruled that they should pay back all the money and he prosecuted the killer (Alswelem, 1988).

In general, it has been argued by many that the prophet used deceptive tricks in order to get to the truth (Awadh, 1980). This has been accepted by many scholars as a better way to get the truth, as it does not involve the use of beating or any compulsion. They believed it justified, so long as it only tricks the accused to think that something else has happened or somebody else has confessed to something but not forces him/her to confess. However, Marzogy (2000:p150-58) argued that the application of this technique to get the truth is allowed if the accused is facing allegations related to breaching and violating the rights of other individuals, but is questionable if the accused is facing allegations related to breaching the his/her obligations towards Allah the Creator. Alswelem (1988) argued that this distinction between the rights of human beings and Allah's (SWT) rights is necessary and justifiable because, according to the *Sharia*, in the case of the *Hudood* which are purely Godly, the level of evidence necessary to prove an offence is higher and the accused has the right to withdraw or change their statement. No only that, but the accused can be induced to retreat from their statement and the accusations can be dismissed if there is any doubt or suspicions. Therefore, Awadh (1980) argued that in such cases of offences against the rights of Allah which do not involve the violation of the rights of any human being, the acceptance of the use of clever tricks violates these safeguards. However, the use of clever tricks is justifiable in case of offences against the person and in exceptional cases of the rights of Allah (SWT) where the accused is publicising his violations and is not ashamed or concerned about his actions.

The Seizure of the Property (wealth) of the suspect

According to the *Sharia*, the wealth and property of the accused persons shall not be seized or retained unless the circumstances necessitate that. In this case, the matter should be looked at from two angles:

1. If the property itself is *haram*, such as alcohol and Idols, then it shall be confiscated and destroyed, as would be the case with anyone who possesses such things. This is considered by the many scholars as an integral part of the erasure of the evil.

2. If the property of the accused is not *haram* (inviolable) then it may be seized as a temporary and precautionary measure while the truth is being investigated. When the truth is known, the rightful property of the accused must be returned him/her. This may also provide a necessary measure to encourage the accused to speak the truth, and it may also discourage them from disappearing or absconding.

If the accused know their property will definitely be returned to them, this may make the seizure less effective as a measure to get to the truth. But if they are not certain about the fate of their property, then they may tell the truth at least to get their property returned (Alswellem, 1988).

According to most of the Malikia, if the accused is detained as a precautionary measure, then s/he should be free to decide which of his property shall not be seized according to them based on mere allegations which are not confirmed by a confession or clear evidence. It has been reported in *Jawhir Al-Ikleel* that ‘and *the accused shall not be restricted based on an allegation until the truth about the matter becomes known*’.

Gardhawe (1983) has disagreed on whether the properties of the accused can be seized or not. On the one hand, Imam Abu-haniefah, Imam Al-Shafiyah in the *Jaddeed*, Mohamed from the Hanafia and view among the Malikiah and a version in the Hanabellah, do not support the seizure and argue that many evidences in the Quran and

the Prophetic Traditions prohibits the 'property of others'. Among these evidences, the Quran says:

'And do not eat up your property among yourselves for vanities, not use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property (the Quran, 1996:Al-Baqarah, S.02 A.188).

In another verse, Allah (SWT) says: *O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you a traffic and trade by mutual good-will '(the Quran, 1996:An-Nisa: S.4 A.29).*

The two evidences from the Quran cited above are taken by many scholars as a proof that the seizure of the property of the accused is not allowed. As the seizure may amount to 'eating up a property belonging to another in vanities'. It may also lead to the discrimination between the rich who have property to be seized or paid for bail and the poor, who do not. The scholars also stated that the confiscation of property and the acceptance of a cash fine in what was not a cash matter were initially allowed, but later abrogated, along with the *Ribba*.

On the other hand, Ahmed supports the seizure of the property of the accused, and cites that Prophet (SAW) warning that those who refuse to donate Zakat (Islamic taxes) voluntarily shall be forced to pay it and shall also be fined. Another evidence cited by proponents of this view is the story that Saad Ibn Abi-Waqas once confiscated the clothes of a man who had been hunting in Al-Madinah city.

The Restriction Work/Employment of the suspect

Work is an important matter as it is a way in which most people earn a living, and is therefore highly regarded by the Sharia. The Sharia considers the violation of the right to work as a punishable crime. The restriction of the accused right to work is a restriction for his right to earn living and own properties (Marzogy, 2000).

However, testing the accused against which there is stronger evidence by restricting him from working may yield some benefits by revealing the truth. Moreover, the restriction of the accused's right to work is similar to his/her precautionary arrest, as both result in the restriction of his/her freedom (to work or move). If the restrictions on the accused right to work is lifted, it becomes similar to his release from arrest. Accused who are arrested are by definition restricted from work. Therefore many scholars who supported the right to arrest the accused have also permitted the temporary restriction of the accused work, particularly if little is known about the accused and their conduct.

The Rights of the suspect in Sharia law

According to the Sharia, any suspect is innocent until proven with *yaqeen* that they are guilty. To establish the truth about the accusations made by any claimant, a thorough investigation must be carried out. In order to ensure that the investigation process is just and fair and does not violate the rights of the accused, the Sharia emphasised a number of rights that the accused is entitled for.

The Right to Defence

The right to defence means that the accused has the right to challenge the evidence presented by the claimant and prove that it is not valid, or to present other evidence or an alibi to show they are innocent of the allegation and can not be linked to the crime. The Sharia indicates that the failure to allow the accused adequately and freely to exercise this right is bound to transform the accusations into a conviction and deny the accused one of their basic rights. Accusations, by their nature, carry elements of doubt and it is only through considering the defence by the accused against the merits of the evidence of the claimant that the truth can be discovered. Since discovering the truth is the prime purpose of the investigation process, then the right to defence is not just a

right that the accused may or may not exercise, but also a duty and an obligation on the community. If the accused has an interest in not to be convicted with a crime which they have not committed, society at large also has an equally important duty and interest that an innocent person must not be convicted and a criminal escape justice. Based on these principles and the rights of the accused and the rights and obligations of society at large, the Sharia made the right to defend oneself against an accusation one of the essential pillars of its justice system and one that can not be restricted, removed or denied under any circumstances.

Evidence that affirms the right to defence is abundant in the Quran and the Sunnah. For example when the Prophet(SAW) appointed Imam Ali as a Governor and a Judge in Yemen, he give him clear instructions to observe the right for defence and said that:

'O' Ali, people will come and seek your judgment in their disputes. So if two persons who are in dispute came to you, you shall not judge in favour of any of them until you hear from the other party in the same way you did with the first. It is of paramount importance that facts become clear to you and you discover who is truthful'.

MImarzogy (2000) argued that Ammer Ibn Abdulaziz was narrated to have advised one of his judges by saying to him:

Even if a claimant came to you with one of his eyes removed, you must not judge for him her until you hear from the person they accused, as it may be possible that you order his other eye to be also removed'

In exercising their right to defend themselves, persons who are accused of an offence are expected to defend themselves by themselves if they are able to do so. However, if the accused is unable to do so, s/he cannot be assumed guilty and convicted on that basis. Some scholars argue that a deaf and dumb person cannot be convicted of a *Huddood* offence even if the necessary level of evidence against him her is sufficiently

met. They supported their view by arguing that had the accused been able to speak, s/he might have raised some doubt on the evidence against him that would prevent his or her conviction of a *Huddood* crime. The scholars argue that as they are unable to speak, deaf persons can not adequately defend themselves by using a sign language only, and it is therefore unjust to convict them for serious offences, such as the *Huddood*.

The Right to Legal Advice

There is no clear cut evidence that stands for or against the right to have a legal representative. However, Imam Abu-Haniefah has permitted issuing a judgment in cases where a legal representative stood on behalf of the accused. He directed that judgement shall be issued against the accused.

In the *Saheeh Hadeeth*, the Prophet (SAW) states that:

‘I am only a human being and you come to (my court) with disputes, and some of you may be more articulate than others and I judge in their favour based on what I hear from them. So if my judgement gives someone what they are not entitled to, then what I have given them would be a piece of hellfire.

It is indeed acknowledged by the Prophet (SAW) in the above Hadeeth that some persons may gain advantages against others by being articulate, more knowledgeable or argumentative. As the ultimate objective of the Sharia is to guarantee justice for everyone, then anything that helps this is a good thing that must be permitted. Moreover, using a legal representative will also help the defence of the accused by ridding them of possible worries and fears that may distract and inhibit their ability to adequately and effectively defend themselves. Legal representatives can also help the accused to understand the allegations they are facing and the strength of the prosecution evidences, and explain to them how to use their own evidences effectively.

In general one can sum up that since the right of defence is a basic *Sharia* right for all accused persons with no exception, the accused must have the right to exercise this right

for them or delegate whoever they wish to represent them. In particular, the use of a legal representative in *Hudood* and criminal offence cases becomes of paramount importance.

In the case of modern legal criminal litigations where the accused often faces a prosecution team which includes the Attorney, the Police and the Criminal Investigation system it would be unjust for the accused person to represent him or herself. Therefore, the Scholars state that the accused must have the right to instruct a legal representative at all stages of the case, process including the investigation stage.

Right of Suspects to Remain Silent

The *Sharia* has given the accused the right to give his/her statement of evidence with complete freedom and without any form of compulsion or torture. Therefore anything that affects the freewill of the accused such as the use of medications or hypnotism, is considered as unacceptable. Granting the accused the right to freewill also means respecting his/her choice to exercise this right and remain silent or decline to answer certain questions.

The *Sharia* also states that if the accused answers some questions and their answers are discovered to be lies, they should not be considered as 'false witness' and shall not be punished for that. If the accused makes any statement or confession, they shall also have the right to withdraw it or amend it.

The Right not to be Forced to Give Evidence

The *Sharia* states that the accused shall not be forced to give evidence or answer questions. Imam Ibn Hazh states that :*.. and there shall not be permissible' hallal' any interrogation in any matter that is based on beating up, imprisonment or threat. The use of such means has been forbidden by the Quran, the Sunnah or the collective agreement of the Ulama (Ijmaa). It is obviously not permissible to draw any Islamic judgement in*

any matter from outside these three sources. The use of such means is also prohibited by the Prophet who states that: " ...your blood, your property, your honour and your **Bashier** are sacred and haram(to be violated) ". And Allah has made the human body and human honour as sacred and Muslims shall not be beaten, verbally abused except for protecting rights that are stated in the Holy Quran and the confirmed Sunnah.

Islamic scholars have also stated that one of the most important conditions for the validity of the witness statement is the free right to chose what to say or not say. According to them, the maker of any statement is truthfully making his/her statement. As is unlikely that a rational person will tell something that will harm them, it is more likely that the accused is telling the truth than lying. However, if the accused is coerced to make a statement, then due to the use of compulsion, it becomes more likely that s/he is lying than telling the truth, just to avoid the compulsion. Evidence obtained through the use of any form of compulsion is therefore considered by the scholars as void and inadmissible. These views are based on the Quranic verses that states " *Any one who, after accepting faith in Allah, utters Unbelief, except under compulsion, his heart remaining firm in Faith..(An-Nah: S. 1, A. 106)*. Since Allah (SWT) considers compulsion a strong reason that mitigates even a mayor sin such as unbelief, and those compelled to act in such a way are not punishable, it is obvious that compulsion is enough to consider any statement or confession made by an accused person inadmissible. The Prophet confirms the prohibition of compulsion by stating the *Hadeeth* that: *My nation is excused for (unintended) mistakes, forgetfulness and what they were compelled to do.*

The right to withdraw a willingly made confession or statement

Islamic scholars have distinguished between two types of confession/statement: confession/statement made on matters relating to the rights/obligation towards the Allah (SWT) and confession/statement made in relations to others persons rights (financial or otherwise). There seems to be a consensus that a statement made willingly in relation to the latter can not be withdrawn, while there are varying views on willingly made statements in relation to the former. The explanation given for the distinction between the two types of statement is that in the case of the confession /statement made in relation to other persons the statement gives a right to the other person. Since the person making the statement doe not have the right to decide on the belongings (properties) of others, s/he cannot withdraw of alter that statement s/he willingly made. However, in the case of the offences relating to obligations/right to Allah (SWT) such as the *Huddood* offences, the retreat from the statement throws doubts on the evidence. Since such offences can not be proven without certainty then the withdrawal or alteration of the statement at any stage before or even after the conviction invalidate the evidence and abrogates the conviction. For example, if a person confessed to committing adultery and later withdrew his/her confession, this must be accepted and the *Hudood* conviction must be abrogated according to the Jamhoor, with the exception of Ibn Abi-Liela, Osman Al-Betty, Abu-Thour and Ahl Al-Zahir. Imam Malik states that if the accused retreated to doubt then it shall be accepted, but if not then he has two views: the most popular view allows it, and the other states that it should not be accepted.

The scholars have agreed that in the *Qazf Hud* (i.e. accusing others of adultery) confession cannot be withdrawn. However, they have not agreed on whether withdrawal a confession may be withdrawn in *Huddood* of theft and drinking alcohol and armed robbery.

In general, most seem to accept the right of the accused to withdraw his/her confession in *Huddood* offences. Their justification for this is the *Hadeeth* in which the Prophet (SAW) said to Maaz, 'You might have accepted or winked or looked'. In this *Hadeeth* the Prophet (SAW) suggested to Maaz that he could withdraw his confession or change his statement, which suggests that the withdrawal of a confession is allowed in the case of *Huddood* (serious offences).

According to the scholars, the withdrawal of the statement must be clearly expressed, for example by saying 'I withdraw my confession' or expressed practically by an action such as running away from the carrying out of *Huddood* punishment.

The similarities and dissimilarities between Sharia law and the law in England and Wales

Like Sharia law, in England and Wales the principles contain a balance between due process and crime control. In 1981, the Royal Commission on Criminal Procedure (the Philips Commission) originally set up because of the wrongful conviction of three youths for the murder of Maxwell Confait, published its plan for a fair, open, workable and efficient system. It recommended that there should be a 'fundamental balance' in criminal justice between the police powers and the rights of suspects. Although not all of its proposals were accepted, the report of the Philips Commission led to the passing of the Police and Criminal Evidence Act 1984 (PACE) and the Prosecution of Offences Act 1985 (Sanders and Young, 2000). The general principles of justice in Sharia law that people shall not be tortured, whether by causing physical or moral harm; and shall not be persecuted, ill-treated or humiliated. Another implication of God's honour for mankind is that all human beings are equal before the law and in criminal proceedings (Awadh, 1980).

The Holy Quran prohibits discrimination on racial grounds and states that:

‘O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most Righteous of you (the quran(1996) Al-Hujurat: S.49 A.13).

The Prophet (SAW) upholds this principle and states that *‘human beings are as equal as the teeth of a comb: no Arab person is preferred to a non-Arab and no white person is preferred to a black person, except for piety and good-deeds’* (Alzehely, 1975).

The underlying principles in Sharia law and England and Wales are similar. Both systems provide protection for the rights of individuals during the criminal procedures, such as the right of an innocent person not to be convicted, the right to be treated fairly and without discrimination, and the right to be presumed innocent.

Conclusion

This chapter has examined the pre-trial procedures in Sharia law. First, the chapter examined the general principles of the justice in Islam and the level of proof in the Sharia litigation. Secondly, the treatment of suspects was examined, including the rules for ordering the suspects to appear in the court, the powers to search and the powers to arrest. Thirdly, the chapter has examined the suspect’s rights in Sharia law and explained the rules of those rights. The rights are the right to defence, the right to legal advice, the right to remain silent and the right to withdraw a willingly made confession or statement. Finally, a comparison was made between principles in Sharia law and England and Wales.

The regulation of pre-trial procedures (the law in books) in England and Wales and Saudi Arabia will be examined in the next chapter.

CHAPTER FIVE: SPECIFIC LEGAL REGULATION OF PRE-TRIAL PROCEDURES (THE LAW IN BOOKS):

- **In England and Wales**
- **In Saudi Arabia**

POLIC POWERS IN ENGLAND AND WALES UNDER PACE

This chapter examines the pre-trial regulation in England and Wales (PACE) and Saudi Arabia. First, the chapter examines the police powers to stop and search, arrest, detention and questioning including the safeguards for suspects' rights during the investigation in England and Wales. Secondly, the equivalent legislation in Saudi Arabia is discussed. Finally, the Saudi Regulation and legal Regulation (PACE) are compared.

Introduction

The Police and Criminal Evidence Act 1984 (PACE) provides for the creation of Codes of Practice to deal with the minutiae of implementation. These Codes cover the following areas:

- The exercise by the police officers of statutory powers of stop and search (Code A).
- The searching of premises by police officers and the seizure of property found by police officers on persons or premises (Code B).
- The detention, treatment and questioning of persons by police officers (Code C).
- The identification of persons by police officers (Code D).
- The tape recording of police interviews (Code E).

Stop and search

The police have several statutory powers to stop, detain and search persons or vehicles without first making an arrest. Many of these powers are specific or limited. However, the 1984 Act as amended creates a general power and also provides certain safeguards for nearly all such stop and searches.

PACE empowers any constable acting on reasonable grounds for suspicion to stop, detain and search persons or vehicles or anything in or on a vehicle, for certain items which may be seized (s.1 (2)). A constable may not, however, search a person or vehicle under section 1 'unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles' (s.1 (3)). Any stolen or prohibited article found in the course of such a search may be seized (s.1 (6)). The section does not deal with anything else found in the course of such a search.

An article is 'prohibited' for the purpose of the statute if it is either an offensive weapon or it is 'made or adapted for use' in the course of or in connection with burglary, theft, taking a motor vehicle without authority or obtaining property by deception or is intended by the person having it with him for such use by him or by some other person (s.1(7)). An offensive weapon is defined as meaning 'any article made or adapted for use for causing injury to persons or intended by person having it with him for such use by him or by some other person' (s.1(9)). Articles made for this use would include a cosh, sword-stick, knuckleduster, revolver, police truncheon and flick knife.

Reasonable grounds of suspicion

The power of stop and search under s.1 can be exercised only if the constable has reasonable grounds for suspecting that stolen or prohibited articles will be found (s.1(3)). It would seem this means that articles will be found as a result of the search. Suspicion of anything else, for example, that an offence not involving possession of such articles has been committed, would not justify a search. 'Reasonable grounds for suspicion' is not defined in the Act but the concept is dealt with in Code of Practice A Para 1.6. In particular, the code points out that there must be some objective basis for

reasonable suspicion which would lead a careful officer to form it, and that the use of the power may have to be justified to the court or a superior officer.

The use of the word 'reasonable' means that the suspicion must be such that a reasonable person would have had that suspicion in those circumstances. If the point is at issue in court proceedings, the court or jury would say what is reasonable. There must be something which gives rise to the suspicion; this might relate to the article itself being visible, the time and place.

Clearly the constable must suspect that the person has, or the vehicle contains, a stolen or prohibited article, and the reasonableness of the suspicion relates to whether the article in question was stolen or prohibited, as well as to whether the person had it. If the suspicion relates to a prohibited article or an offensive weapon made or adapted for causing injury, the suspicion must be that the article will be used, not merely that it has been used. The person who is searched need not be the person who has stolen the goods or who will use the item. In the case of offensive weapons not made or adapted for causing injury, or an article not made or adapted for use in connection with one of the listed offences, the person searched must be suspected of intending that the item will be used by someone, unless an item covered by it is s139.

Where a police officer has reasonable grounds to suspect that person is in innocent possession of an item for which there is power to stop and search (whether under the 1984 Act or any other power governed by Code of Practice A) then that power stop and search exists, even though there would be no power of arrest.

Stopping and detaining

Any constable can conduct a search of person or a vehicle and does not have to be on duty or in uniform, except actually to stop a vehicle. In order to exercise the power under s1 a constable may detain a person or vehicle (s1 (2) (b)). A detention under s1

may be only for the purpose of a search. A stop or detention for any other purpose would be unlawful unless based on some other legal authority. Reasonable suspicion must already exist before the stop or detention takes place.

There is no power to stop or detain a person against his or her will in order to find grounds for a search. A person who has been stopped with a view to a search may be questioned about the behaviour or circumstances which gave rise to the suspicion. If the answers are satisfactory and there cease to be reasonable grounds for suspicion for the search, no search may take place. Although the existence of reasonable grounds may be confirmed or eliminated as a result of such questioning, they must exist to begin with and cannot arise merely from the questioning or from any refusal to answer (Code A paras 2.1 to 2.3).

The Act does not provide an express power to stop a person or vehicle. It is possible that the power to detain necessarily includes a power to stop. It is also possible that the power of detention can be exercised only if a person has already been stopped for some other purpose or a vehicle is stationary or has been stopped under Road Traffic Act 1988 (s163). The Act expressly states that s1 does not authorise a constable not in uniform to stop a vehicle (s2(9)(b)).

The Act imposes certain duties on a constable who proposes to detain and search (ss2 and 3).

Searching persons and vehicles

The power to search a vehicle includes a power to search anything (but not any person) in or on it (s1 (2)). If the suspicion is that stolen or prohibited goods are in a bag in the vehicle, it is unclear whether that justifies a search of the whole car.

If the constable suspects that the goods are in the car and there is also a person in the car, it seems to that there must be separate suspicion relating to that person before the car can be searched as well.

If a person is carrying a bag, there is nothing in the Act which specifically allows a search of the bag as well as instead of a search of the person. The Code of Practice assumes that a bag may be searched (Code A Para 3.2). The wording of the 1984 Act may be contrasted with wording of the powers of search under written authorisation contained in Criminal Justice and Public Order Act 1994 (s60).

A constable may use 'reasonable force', if necessary, in the conduct of the search and in the detention (s117). Reasonable force is not defined in the Act, but it is an objective test for the court or jury to apply. The Code of Practice provides that force 'may only be used as a last resort' and only if it has been established that a person is not willing to cooperate (Code A para 3.2). The thoroughness and extent of the search that is justifiable depends on what is suspected of being carried. The requirement of reasonable grounds of suspicion implies that the search is limited in extent and matter to what is justified by the original reasonable suspicion.

The power conferred by the 1984 Act s1 is to detain and search without making an arrest. A constable who wishes to search a person but has not power to do so might be able to arrest under a different provision and then search after arrest (s32).

It has been suggested that since stop and search powers are hedged about with more safeguards than arrest, police officers are more likely to make an arrest, conduct a post-arrest search for evidence, and then release the suspect if nothing is found (Zander, 1995).

Entry and search of premises

The Act and Code B provide certain procedures which the police must follow where they want to enter premises to search for evidence of an offence, or in connection with making an arrest. Only a partial definition of 'premises' is provided by the Act (s23). Premises include any place, which is not defined, but must include land: in s1 (4) and (5) 'place' clearly includes land. 'Premises' also includes any vehicle, vessel, aircraft or hovercraft, and any tent or moveable structure (s118).

Entry and search by warrant

Where the police want to enter premises to search for evidence of an offence, the procedure that must be followed under the 1984 Act will depend initially on whether the owner or occupier has consented in writing to the search. If the police have the owner or occupier's written consent, they may enter and search premises provided that the owner gave an informed consent. Lack of written consent will cast doubts on police claims of consent (Code B para 4).

Where the police do not have the consent of the owner or occupier, the procedure to be followed will depend on the nature of the evidence sought. 'Evidence' is referred to throughout the 1984 Act as 'material' and might consist of anything, for instance bullets, clothes, human tissue, cheque books, accounts or fingerprints. The nature of the evidence is important because the Act provides special safeguards to protect evidence which could be described in general terms as being of a confidential nature; that is, held in confidence by the person possessing it.

In the vast majority of cases where the police want to search for evidence, but cannot obtain consent to do so, the evidence that they are seeking will not be subject to any special safeguard; the police will simply apply to a magistrate for a search warrant. However, the Act provides safeguards where the police are seeking:

- Some categories of personal records, human tissue or tissue fluid, or journalistic material, which are held by a person in confidence.
- Certain other evidence held by a person in confidence, such as company accounts
- Items subject to legal privilege.

It is essential to establish how the evidence in question is classified as different safeguards apply to each category.

If the police are seeking excluded or special procedure material, in most cases they will have to apply to circuit judge for a production order (rather than to a magistrate for a search warrant). A production order requires the person in possession of the evidence either to produce it to a constable to take away, or to give a constable access to it, so the person is not subject to a search of premises. When the police apply for such an order, the person possessing the evidence is served with a notice to that effect. Once the notice is served, the person is, effectively, prohibited from concealing or disposing of the evidence. Unlike an application for a search warrant, an application for a production order is made *inter partes*.

Legally privileged material is exempt from any powers to search (except under written authority other than a warrant). Where the police have the power to apply for a search warrant under another statute, the classifications of evidence are effective and procedures in the 1984 Act and Code B apply.

Thus, statutes passed before the Act which give the police powers to obtain search warrants from magistrates are ineffective so far as excluded material is concerned (s9(2)(b)). In such a case, an application to a circuit judge will have to be made in accordance with the provisions of the 1984 Act. However, statutes which enable the police to gain access under written authority other than a warrant are unaffected, because the 1984 Act refers only to warrants.

Where the police have the power to apply for a search warrant under any statute, the application for the warrant and the conduct of the search are subject to the provisions of ss15 and 16 and the Code of Practice.

Entry without a warrant

All police powers to enter premises without a warrant for the purpose of, or in connection with, making an arrest are contained in the 1984 Act (ss17, 18 and 32). Often these are directed towards the enforcement of statutory schemes for the regulation of a specified activity, for example, the powers of entry without warrant under the Gaming Act 1968 (s43(2)). These powers are unaffected by the Act. All common law powers of entry without warrant are abolished, with the exception of powers of entry to deal with or prevent a breach of peace (1984 Act s17 (5) and (6)). With the exception of the aforementioned powers, all police powers to enter premises without a warrant are contained in s17 (entry for arrest and other purposes); s18; and s32 (entry after arrest). These three sections also contain limited powers of search. The police do not have any power to enter premises against the wishes of the occupier for the purpose of pursuing enquiries into an alleged offence.

A constable may enter and search any premises for the many purposes set out in s17. S/he may enter and search for the purpose of executing an arrest. A warrant issued in connection with or arising out of criminal proceeding or a warrant of commitment will be issued under the Magistrates' Court Act 1980 s76 (s17 (1)(a)).

Seizure of evidence

Under the 1984 Act the police have the following specific powers to seize property:

- a) To seize any article which they have reasonable grounds for suspecting to be stolen or prohibited which is discovered in the exercise of a search under s1 (s1 (6)).
- b) To seize and retain anything for which a search was authorised under s8 (s8 (2)).
- c) To seize property for which a circuit judge has issued a search warrant under Sch 1 (Sch 1 para 13).
- d) To seize and retain anything for which they may search when a person is under arrest for an arrestable offence (s18 (2)).
- e) To seize and retain anything found during a search of a person after arrest, where the arrest takes place other than at a police station (s32 (8) and (9)).
- f) To seize and retain anything discovered during a search at a police station or whilst in police detention (ss54 (3) and 55 (12))

However, in addition to these specific powers, the police, provided that they are lawfully on any premises, are given extensive powers to seize anything (except items subject to legal privilege) regardless of whether they had authority to search for it (s19).

Where a police officer is lawfully on any premises there exist the general powers of seizure if:

- a) pursuant to written authority.
- b) pursuant to a valid search warrant issued under 1984 Act or any other statute.
- c) under s17 (entry to effect arrest, to recapture a person unlawfully at large, or to save life or limb).
- d) under s18 (entry after arrest).
- e) under s32 (entry and search of premises in which a person was arrested or in which a person was immediately prior to arrest).
- f) to deal with or prevent a breach of the peace
- g) with the consent of the occupier.

A police officer may seize anything if there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or there is an evidence in relation to an offence which the officer is investigating (s19 (2) and (3)).

Arrest

A general power of arrest for offences is provided by s25 of the 1984 Act. The only exceptions from the restrictions associated with this power are the powers of arrest:

- a) for arrestable offences;
- b) at common law for breach of the peace;
- c) for those offences listed in the 1984 Act Sch 2; and
- d) created by some post-1984 provisions.

Section 25 gives the police general powers to arrest for any non-arrestable criminal offence no matter how petty or minor but only if at least one of the general arrest conditions listed in s25 (3) is satisfied, and it appears therefore that service of a summons is impracticable or inappropriate. There is no power to arrest if none of the arrest conditions is satisfied and any purported arrest would be unlawful.

The assumption in s25 is that the police should proceed by way of summons rather than arrest, and if they do so the person will not be taken into custody but will in due course be given a time and date on which to appear at a particular court. A constable can exercise the power of arrest under s25 only if:

- a) the constable has reasonable grounds for suspecting that an offence has been, or is being, committed or attempted; and
- b) the constable has reasonable grounds to suspect a person of having committed or attempted, or of being in the course of committing or attempting to commit that offence; and

- c) it appears to the constable that service of a summons is impracticable or inappropriate: and
- d) the impracticability or inappropriateness is because one of the general arrest conditions is satisfied (s25 (1) and (2)).

Reasonable grounds

The test of reasonable grounds is an objective one and can be challenged in the court. However, the test of 'appears to him' in (c) is a subjective one. It depends on the constable's own perceptions and cannot be challenged unless it is alleged that the constable has acted in bad faith or taken into account irrelevant considerations. It is not sufficient that the offence is or has actually been committed or attempted or that service of the summons is impractical or inappropriate. The constable must actually have the state of mind required by the wording of s25.

The power of arrest under s25 clearly does not arise if the constable suspects that an offence will be committed in the future even if one of the general arrest conditions is satisfied. The constable must have reasonable grounds for suspicion that an offence has been, or is being, committed or attempted (s25). There must be at least an attempt as defined in the Criminal Attempts Act 1981 s1 and not merely some action or contemplation that falls short of an attempt. There could still be an arrest under s25 of the 1984 Act (since there is an attempt to commit an offence) but this would not be an arrest for an offence.

Information to be given on arrest

A person who is being arrested must be informed of the fact of, and the ground for, the arrest, either at the time or as soon as is practicable after the arrest (s28(1) and (3)). This applies irrespective of who is making the arrest (constable, store detective,

civilian). but if it is a constable, the information must be given, regardless of whether the fact of, or the ground for, the arrest is obvious (s28(2) and (4)).

There is no express requirement that a non-constable must give the information if the facts are obvious. This is to prevent non-constables incurring liability as a consequence of arrests in which they might not be aware of all the technicalities. However, the facts must be so obvious as to amount to the conveying of information; otherwise the arrest will not be lawful.

The requirements apply where the arrest is with or without warrant, under a statutory power or at common law, for an offence or otherwise. The arrest is unlawful if the ground given does not in fact justify the arrest.

If not given on arrest, the information must be given as soon as practicable. This is an objective question of fact and a fairly high test. It means as soon as at all practicable, not merely as soon as is reasonably practicable. Examples might be when a drunk sobers up, when an armed person is disarmed, or when a violent suspect calms down or is subdued. It might never be practicable to tell a person who is incapable of understanding.

If a person arrested escapes from arrest before the information can be given, and therefore it is not reasonably practicable to give it, then the information need not be given (s28(5)).

Arrest elsewhere than at police station

The general rule is that a person arrested for an offence by a constable, or taken into custody by a constable after being arrested by someone else, shall be taken to a police station as soon as practicable after arrest (s31(1)).

Usually a constable will be called and informed of the situation. At this stage the suspect must be allowed to leave unless the constable makes an arrest, at which point the safeguards relating to arrest apply (s24).

If persons are arrested by a constable at a place other than a police station, and the constable is satisfied before reaching the police station that there are no grounds for keeping them under arrest, they must be released (s30(7)). A constable who releases a person under this provision must record the fact of the release as soon as practicable after the release (s30(8) and (9)).

Arrest for a further offence

Where a person has been arrested for an offence and is at a police station in consequence of that arrest and it appears to a constable that the person is also liable to arrest for any other offence, the person must be arrested for that other offence (s31). The arrested person must then be informed of the new arrest and the grounds for it under the provision of s28. The time limits on detention under s41 apply from the time of the first arrest (s41(4)). The aim of this provision is to exclude the possibility that a person may be released on bail, having been charged with the offence for which first arrested, and then immediately rearrested for another offence, so turning the detention clock back to zero (s31).

Detention by the police

The Police and Criminal Act 1984 created a scheme involving a number of stages during a suspect's detention by the police at which the continuation of custody must be authorised. The authorisations are by police officers in the earlier stages and by magistrates in the later stages. The maximum period for which detention without charge can be authorised is 96 hours in the case of a serious arrestable offence and 24 hours in

other cases, but in practice a suspect might be in police custody for a number of hours before the detention clock starts to run. The detention is supervised by a custody officer.

Designated police station

A person arrested for an offence must normally be taken to a police station as soon as practicable after the arrest (s30). If the arrested person is to be detained for more than six hours, s/he must be taken to a designated police station before six hours has elapsed (s30). A breach of this requirement would render continued detention unlawful.

Section 35 requires the chief officer of police for each area to designate police stations appearing to provide enough accommodation for the purpose of detaining arrested persons. At designated police stations, the duties of custody officer can be performed by any officer (s36).

Duties of the custody officer

The Act makes the custody officer responsible for ensuring that all persons in detention at the police station are treated in accordance with the Act and the Codes of Practice, and that all matters required to be recorded are recorded in custody records relating to such persons (s39(1)).

If the custody officer permits the transfer of someone in police detention to the custody of the investigating officer or an officer who has charge of that person outside the police station, the responsibilities under s39(1) pass to that officer, who, on returning the person to the custody of the custody officer, must report to the latter on the manner in which these responsibilities have been carried out (s39(2) and (3)).

If an officer of a higher rank than the custody officer gives directions relating to a person in police detention which are at variance with a decision which the custody officer has made or would have made, the custody officer must refer the matter at once

to an officer of the rank of superintendent or above who is responsible for the police station (s39(6)).

Detention without charge

If the custody officer decides that there is insufficient evidence to charge, then the arrested person must be released unconditionally or on bail except in the following circumstances.

Release is not obligatory when the custody officer has reasonable grounds for believing that detention without charge is necessary:

- a) to secure or preserve evidence relating to an offence for which the person is under arrest; or
- b) to obtain such evidence by questioning of the person (s37(2)).

In such a case the custody officer may authorise the keeping of the person in police detention and must make a written record of the grounds as soon as is practicable (s37(3) and (4)). The custody officer must, at the time, inform the suspect of the grounds for detention unless s/she is incapable of understanding what is said, or is violent or likely to become violent, or is in urgent need of medical attention (s37(5) and (6)).

Detention limitation

The general rules are that a person may not be kept in police detention for more than 24 hours without being charged; must be released, unconditionally or on bail, at the end of that time if still in detention without having been charged; and cannot be rearrested without a warrant for the same offence unless new evidence justifying a further arrest has come to light since release (s41(1), (7), (9)).

At any time after the second s40 review has been carried out and before the expiry of 24 hours, an authorisation of continued detention can be given, subject to certain condition (s42(4)).

The authorisation can be given only by an officer of the rank of superintendent or above who is responsible for the police station at which the person is detained (s42(1)). The authorisation may extend the period of detention up to 36 hours from the time when the detention clock started to run. If a lesser period than 36 hours is authorised, the authorisation may be extended for up to the rest of the 36 hours period, but at each extension the conditions set out below must still be satisfied (s42(2)).

The officer giving the authorisation can do so only where s/she has reasonable grounds for believing that:

- a) an offence for which the person is under arrest is a serious arrestable offence;
- b) the investigation is being conducted diligently and expeditiously; and
- c) continued detention without charge is necessary to secure or preserve evidence or to obtain evidence by questioning the suspect (s42(1)).

Questioning and treatment of suspects

Code C provides that a custody record must be opened as soon as practicable for each person taken to a police station under arrest or arrested there. All details relating to the treatment of the person while detained must be recorded in it. The custody officer is responsible for the accuracy and completeness of the record and for ensuring that the record or a copy accompanies the person if transferred to another station. When a suspect is taken before a court or leaves police detention, the suspect or legal advisor or appropriate adult is entitled to be supplied, on request, with a copy of the record as soon as practicable. The suspect's legal representative or appropriate adult is entitled to see

the custody record as soon as practicable after their arrival at the police station (Code C para 2).

A person who is taken to a police station under arrest or who is arrested there having attended voluntarily must be informed clearly by the custody officer of the following rights and that they are continuing rights which may be exercised at any stage during the period in custody. They are the rights to:

- have someone informed of the arrest;
- receive legal advice in private (and that it is free of charge);
- consult the Codes of Practice (Code C para 3.1)

Access to legal advice

An arrested person who is held in custody by the police in a police station or other premises has the right to consult a solicitor privately at any time (s58). The right under this section is not restricted to persons who have been arrested for an offence and are in a police station, but extends to anyone who has been arrested, whether or not for an offence.

A person must be informed of the right to advice when s/he is taken to a police station under arrest, or arrested having attended voluntarily (Code C para 3.1): immediately before the beginning or re-commencement of any interview at the police station or other authorised place of detention (Code C para 11.2); before a review of detention is conducted (Code C para 15.3).

Intimate searches

An intimate search may be conducted only when a suspect is in police detention and the search has been authorised by someone of at least the rank of superintendent (s118(2)). This latter authorisation can be written or oral, which of course includes authorisation by telephone, but if it is oral it must be confirmed in writing as soon as

practicable. The search should be carried out only for the purpose stated in the section. There is no general power to conduct an intimate search to look for evidence, even of a serious arrestable offence (s55(3)).

Mentally disordered or handicapped persons

Where a mentally disordered or handicapped person is arrested and held in custody, the police are under a duty to inform the 'appropriate adult' of the arrest, the reason for it and the whereabouts of the person (Code C para 3.9).

The Code C states that where the custody officer has any doubt as to the mental state or capacity of a detained person s/he should contact an appropriate adult. Further, if the person appears to be suffering from mental disorder, the custody officer must immediately call the police surgeon whether or not the suspect has requested medical attention (Code C para 9.2).

Intimate and non-intimate samples

The police have power under the Act to take intimate samples from persons in police detention but consent or the appropriate consent must be obtained and the action must be authorised (s62). However, the police have power to take non-intimate samples without consent, provided certain conditions are satisfied (Code D para 5.11).

Tape recording of interviews

The tape recording of interviews with suspects at police stations is governed by Code of Practice E. It provides for mandatory tape recording of interviews in the following circumstances:

- a) with a person who has been cautioned in accordance with para 10 of Code C in respect of an indictable offence; or

- b) after charge, or after a suspect has been informed of possible prosecution, where the police wish to put further questions about an indictable or either-way offence; or
- c) where the police want to bring to the notice of such a person any written statement by another person or the content of an interview with another person..

PRE-TRIAL REGULATION IN SAUDI ARABIA

Introduction

The exercise of police powers is subject to rules and guidelines, and the extent of police powers has occasioned considerable controversy since the inception of the 'new police'. On the one hand, the police clearly need powers to stop people on the street if they are suspected of a crime, to enter people's houses if they suspect that they are hiding stolen goods or firearms and to arrest people they suspect of a crime. They need to be able to interview suspects in the police station and may have to hold suspects in cells. On the other hand, individual citizens need to be able to carry on with their everyday lives without risking being stopped on the streets, having their homes ransacked by the police and being arrested and taken to the police station.

Suspects must be protected from torture, brutality and the extraction of false confessions. Special protection may be afforded to vulnerable groups such as the young and mentally ill. Legislation on police powers therefore must balance conflicting needs.

The Stop, Arrest, Detention and Custody Regulation (SADC) was set up in 1983 it gave more power to the police in Saudi Arabia, and provided safeguards for suspects as to when the powers can be exercised.

Stop and search

"Police and other related forces have got the right to stop anyone if they find them acting suspiciously (Article 1, 1983)

There are many people who are confused about the meaning to stop and detain, and there are many differences between them. Stopping means that the police, in case of doubt, can stop a person to question and discuss with him. That does not mean that they detain him if they find no reason for this.

The Article has identified circumstances that give the police the right to stop a person, that is, if they find a person in a doubtful situation. For example, if the police saw a person late at night lurking around a house or a shop, the police have got the right to stop that person and question him about his identity and the reason why he is in that place at that time. If the police find a justification for that, then they will allow the person to go, otherwise they will take him to the nearest police station for further investigation.

The privacy of persons, their dwellings, offices, and vehicles shall be protected. The privacy of a person protects his body, clothes, property, and belongings. The privacy of a dwelling covers any fenced area or any other place enclosed within barriers or intended to be used as a dwelling (Article 40, 1983).

Police officers may search the accused where it is lawful to arrest him, which may include his body, clothes, and belongings. If the accused is a female, the search shall be conducted by a female assigned by a police officer (Article 42, 1983).

Arrest

“Whenever there is suspicion that a person has committed a crime, he should be arrested and taken to the relevant authorities. Then a report should be prepared to identify the arresting officer, the detainee details, and the time of arrest and the reasons for the arrest (Article 2, 1983).

No person shall be arrested, searched, detained or imprisoned except in cases provided by law. Detention or imprisonment shall be carried out only in the place designated for such purposes and shall be for the period prescribed by the competent authority.

An arrested person shall not be subjected to any bodily or moral harm. Similarly, he shall not be subjected to any torture or degrading treatment (Article 3, 1983).

The criminal investigation officer shall immediately hear the statement by the accused. If the accused fails to establish his innocence, the officer shall, within twenty-four hours, refer him, along with the record to the Investigator who shall within twenty-four hours, interrogate the accused under arrest and shall order either that the accused be detained or released (Article 34, 1983).

No person shall be arrested or detained except on the basis of order from the competent authority. Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest (Article 35, 1983).

No person shall be detained or imprisoned except in the places designated for that purpose by law. The accused shall not remain in custody following the expiry of the period specified in that order.

Entry and search of premises

Police officers may not enter or search any inhabited place except in the cases provided for in the laws, pursuant to a search warrant specifying the reasons for the search, issued by the Bureau of Investigation and Prosecution. However, other dwellings may be searched pursuant to a search warrant, specifying the reasons, issued by the Investigator. If the proprietor or the occupant of a dwelling refuses to allow the criminal investigation officer free access, or resists such entry, he may use all lawful means, as may be required in the circumstances, to enter that dwelling.

A dwelling may be entered in case of a request for help from within, or in case of a demolition, drowning, fire, or the like, or in hot pursuit of a perpetrator (Article 41, 1983).

A criminal investigation officer may search the dwelling of the accused and collect relevant items that may help determine the truth, if there is credible evidence that such items exist there (Article 43, 1983).

If it appears from circumstantial evidence during the search of a dwelling of an accused that he, or any other person who has been present therein, is concealing any relevant evidence, the criminal investigation officer shall be entitled to search that person (Article 44, 1983).

No search shall be conducted except for the purposes of searching for items relevant to the crime being investigated or for which information is being collected. However, if such search incidentally reveals unlawful material the possession of which is unlawful or any evidence associated with any other crime, the criminal investigation officer shall collect such evidence and a note to that effect shall be entered into the record (Article 45, 1983).

The search record shall include the following:

- (1) The name of the officer who has conducted the search, his title, date and time of the search.
- (2) The text of the search warrant or an explanation of the urgency that necessitated the search without a warrant.
- (3) The names and signatures of the persons who were present at the time of the search.
- (4) A detailed description of the seized items.
- (5) Declaration of any action taken during the search and those taken with respect to the search and those taken with respect to the seized items (Article 47, 1983).

No person other than the accused and no dwelling other than his shall be searched, except where there are strong indications that such search would help in the investigation (Article 54, 1983).

Search of dwellings is an investigative act and shall not be conducted except pursuant to a statement of a person residing in the relevant dwelling, that he either committed a crime or participated therein or there was circumstantial evidence indicating that he was in possession of items relevant to that crime. The Investigator may search any place and seize any item which is likely to have been used in the commission of that crime or resulting there from and any other thing that may be useful in determining the truth including any document or weapon. In all cases, the Investigator shall prepare a record of that search, specifying the reasons therefore and the results thereof. However, dwellings shall not be entered or searched except as provided by law. Search warrant issued by the chairman of police (Article 80, 1983).

Seizure of Mail and Surveillance of Conversations

Mail, cables, telephone conversations and other means of communication shall be inviolable and, as such, shall not be perused or surveilled except pursuant to an order stating the reasons thereof and for a limited period as herein provided for (Article 55, 1983). The Investigator alone may peruse the mail, documents, and any other seized items and may listen to any recorded material. He may issue orders that any such material, or copies thereof be kept in the file of the case or returned to its former owner or to the addressee (Article 57, 1983).

Detention by police

No person shall be detained or imprisoned except in the places designated for that purpose by Law. The accused shall not remain in custody following the expiry of the period specified in that order (Article 36, 1983). If it appears, following the interrogation of the accused, or in the event of his flight, that there is sufficient evidence of a major crime against him, or if the interest of the investigation requires his detention

to prevent his fleeing or affecting the proceedings of the investigation, the Investigator shall issue a warrant for his detention for a period not exceeding five days from the date of his arrest (Article 113, 1983).

The detention shall end with the passage of five days, unless the Investigator sees fit to extend the detention period. In that case, he shall, prior to expiry of that period, refer the file to the Chairman of the branch of Bureau of Investigation and Prosecution in the relevant province so that he may issue an order for extending the period of the detention for a period or successive periods provided that they do not exceed in their aggregate forty days from the date of arrest, or otherwise release the accused (Article 114, 1983).

Upon the detention of the accused, the original text of the detention warrant shall be delivered to the detention centre officer who shall sign a copy of that warrant as an acknowledgement of receipt (Article 115, 1983).

Any prisoner or detainee shall have the right to submit, at any time, a written or verbal complains to the prison or detention centre officer and request that he communicate it to a member of the Bureau of Investigation and Prosecution. The officer shall accept the complaint and promptly communicate it [to the Bureau of Investigation a Prosecution] and provide the prisoner or detainee with an acknowledgement of receipt. The administration of the prison or detention centre shall designate a separate office for the member of Bureau of Investigation and Prosecution and enable him to follow-up the cases of the prisoner or detainees (Article 38, 1983).

Temporary Release

An investigator in charge of the case may, at any time, whether of his own accord or pursuant to a request by the accused, issue an order for the release of such accused, if he considers that there is no sufficient justification for his detention, that his release would not impair the investigation, and that there is no fear of his flight or disappearance.

provided that the accused undertakes to appear when summoned (Article 120, 1983).

In cases other than those where the release is mandatory, the accused shall not be released until he has designated a residence acceptable to the Investigator (Article 121, 1983).

An order for the release shall not stop the Investigator from issuing a new warrant for the arrest or detention of the accused if evidence against him becomes stronger, or where the accused violates his undertakings, or where the circumstances of the case require such action (Article 122, 1983). If the accused is referred to a court, his release if detained or detention if not under arrest shall be within the jurisdiction of the court to which he has been referred.'

If lack of jurisdiction is determined, the court rendering the judgment of lack of jurisdiction shall have jurisdiction to consider the release or detention request, pending the filing of the case with the competent court (Article 123, 1983).

The decision staying the case shall not preclude the reopening of its file and the reinvestigation whenever there is new evidence strengthening the charge against the dependent. Such new evidence includes testimony of witnesses as well as records and other documentation that had not been previously presented to the Investigator (Article 125, 1983).

If the Investigator is of the opinion, following completion of the investigation, that there is sufficient evidence against the accused, the case shall be referred to the competent court, and summons shall be served on the accused to appear before it (Article 12, 1983)

Legal advice

During the investigation, the accused shall have the right to seek the assistance of a representative or an attorney. The Investigator shall conduct an investigation in the commission of any major crimes as herein provided for. He may also investigate other crimes if the circumstances of or gravity of the case so require or may file a lawsuit to have the accused appear directly before the competent court (Article 64, 1983).

The accused, the victim, the complainant in respect of the private right of action, and their respective representatives or attorneys may attend all the investigation proceedings. The Investigator may, however, conduct the investigation in the absence of all or some of the abovementioned, whenever that is deemed necessary for determining the truth. Immediately after the necessity has ended, he shall allow them to review the investigation (Article 69, 1983).

The Investigator shall not, during the investigation, separate the accused from his accompanying representative or attorney. The representative or attorney shall not intervene in the investigation except with the permission of the Investigator. In all cases, the representative or attorney may deliver to the Investigator a written memorandum of his comments (Article 70, 1983).

Questioning and treatment of suspect

When the accused appears for the first time for an investigation, the Investigator shall take down all his personal information and shall inform him of the offence of which he is charged. The Investigator shall record any statements the accused expresses about the accusation. The accused may be confronted with any other accused person or witness. After statements of the accused have been read to him, he shall sign them. If he declines to sign, a note, to that effect shall be entered into the record (Article 101, 1983).

The interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements. The accused shall not be asked to take an oath nor shall he be subjected to any coercive measures. He shall not be interrogated outside the location of the investigation bureau except in an emergency to be determined by the Investigator (Article 102, 1983).

In all cases, the Investigator may, as the case may be, summon any person to be investigated, or issue a warrant for his arrest whenever investigation circumstances warrant it (Article 103, 1983).

Each summons shall specify the full name of the person summoned, his nationality, occupation, place of residence, date of the summons, the time and date for his appearance, name and signature of the Investigator and the official seal. In addition, the arrest warrant shall instruct the public authority officers to arrest and bring the accused promptly before the Investigator in the event he refuses to appear voluntarily. Furthermore, the detention warrant shall instruct the detention centre officer to admit the accused into detention centre after explaining the offence with which he is charged and the basis thereof (Article 104, 1983).

If the accused fails to appear without an acceptable cause after having been duly summoned, or if it is feared that he may flee, or if he is caught "flagrante delicto", the Investigator may issue a warrant for his arrest and appearance even if the incident is of such kind for which the accused should not be detained (Article 107, 1983).

The Investigator shall promptly interrogate the accused who has been arrested. If this is not possible, he shall be kept in a detention centre pending his interrogation. The period of detention shall not exceed twenty-four hours. On expiry of that period, the detention centre officer shall notify the chairman of the relevant department which shall interrogate him promptly, or issue an order for his release (Article 109, 1983).

If the accused is arrested outside the venue of the department conducting the

investigation, he shall be brought to the investigation department in the area where he was arrested. This department shall verify all the relevant personal particulars and inform the accused of the incident attributed to him. His statements in respect thereof shall be recorded. If it is found necessary that he be transferred, he shall be notified of the place of his transfer (Article 110, 1983).

If the Investigator is of the opinion, following completion of the investigation, that there is insufficient evidence to proceed with the case, he shall recommend to the Chairman of the relevant department to stay the case and the accused detainee shall be released- unless he is detained for another reason. An order by the Chairman of the relevant department in support thereof shall be effective - except in major crimes where the order shall not be effective unless confirmed by the Director of the Bureau of Investigation and Prosecution or his deputy.

The said order shall explain the reasons therefore and be communicated to the claimant in respect of the private right of action, and to his heirs collectively at his place of residence in case of his death (Article 125, 1983).

Comparison between PACE and Saudi regulations (law in books)

Both Police and Criminal Evidence Act 1984 (PACE) in the UK and Saudi regulation Act 1983 provided powers for police to investigate crime and also provided certain safeguard for suspects.

Stop and search

Like the Saudi regulation, PACE empowers any constable acting on reasonable grounds for suspicion to stop, detain and search persons or vehicles or anything in or on a vehicle, for certain items which may be seized (s.1 (2)). A constable may not, however, search a person or vehicle under section 1 'unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles' (s.1 (3)). Any stolen or prohibited article found in the course of such a search may be seized (s.1 (6)). The section does not deal with anything else found in the course of such a search. Article 1 (1983) of Saudi regulation gave the right to police to stop any one if they find them acting suspiciously. Saudi regulation is almost the same as PACE in determining 'reasonable suspicion' for stop and search. The Article has identified circumstances that give the police the right to stop a person, that is, if they find a person in a doubtful situation. For example, if the police saw a person late at night lurking around a house or a shop, the police have got the right to stop that person and question him about his identity and the reason why he is in that place at that time. If the police find a justification for that, then they will allow the person to go, otherwise they will take him to the nearest police station for further investigation.

Arrest

Again arrest is nearly as in PACE the Saudi regulation provides power for police to arrest any person if they suspected that person has committed a crime. Article 2 (1983) of the Act explains the procedures which the police have to conduct throughout arrest.

for example, the authority of arrest, recording a report and the detainee details. However, PACE had made clear that where a person has been arrested for an offence and is at a police station in consequence of that arrest and it appears to a constable that the person is also liable to arrest for any other offence, the person must be arrested for that other offence (s31). The arrested person must then be informed of the new arrest and the grounds for it under the provision of s28. The time limits on detention under s41 apply from the time of the first arrest (s41(4)). The aim of this provision is to exclude the possibility that a person may be released on bail, having been charged with the offence for which first arrested, and then immediately rearrested for another offence, so turning the detention clock back to zero (s31).

Entry and search premises

Like PACE the Saudi Regulation Act provides power to enter and search premises by warrant and police officers may not enter or search any inhabited place except in the cases provided for in the laws, pursuant to a search warrant specifying the reasons for the search, issued by the Bureau of Investigation and Prosecution. However, other dwellings may be searched pursuant to a search warrant, specifying the reasons, issued by the Investigator. If the proprietor or the occupant of a dwelling refuses to allow the criminal investigation officer free access, or resists such entry, he may use all lawful means, as may be required in the circumstances, to enter that dwelling (Articles 41, 1983). In contrast, PACE explains the specific powers of seizure of property. In addition to these specific powers, the police, provided that they are lawfully on any premises, are given extensive powers to seize anything (except items subject to legal privilege) regardless of whether they had authority to search for it (s19).

Detention limitation

The Police and Criminal Evidence Act 1984 created a scheme involving a number of stages during a suspect's detention by the police at which the continuation of custody

must be authorised. The authorisations are by police officers in the earlier stages and by magistrates in the later stages. The maximum period for which detention without charge can be authorised is 96 hours in the case of a serious arrestable offence and 24 hours in other cases, but in practice a suspect might be in police custody for a number of hours before the detention clock starts to run. The detention is supervised by a custody officer. Saudi regulations are approximately the same as the maximum of detention period is five days.

Legal advice

Like PACE, the Saudi regulation provides that during the investigation, the accused shall have the right to seek the assistance of a representative or an attorney. The Investigator shall conduct an investigation in the ` commission of any major crimes as herein provided for. He may also investigate other crimes if the circumstances of or gravity of the case so require or may file a lawsuit to have the accused appear directly before the competent court (Article 64, 1983). However, PACE adds that the suspect has the right to legal advice at any time and free of charge (s58).

Questioning and treatment of suspect

The Saudi regulations are nearly the same as PACE, in that when the accused appears for the first time for an investigation, the Investigator shall take down all his personal information and shall inform him of the offence of which he is charged. The Investigator shall record any statements the accused expresses about the accusation. The accused may be confronted with any other accused person or witness. After statements of the accused have been read to him, he shall sign them. If he declines to sign, a note to that effect shall be entered into the record (Article 101, 1983). However, PACE provides that the person who is taken to a police station under arrest or who is arrested there having attended voluntarily must be informed clearly by the custody officer of the

following rights and that they are continuing rights which may be exercised at any stage during the period in custody. They are the rights to:

- have someone informed of the arrest;
- receive legal advice in private (and that it is free of charge);
- consult the Codes of Practice (Code C para 3.1)

Overall the Saudi regulations are very similar to PACE in providing the police powers for stop and search, arrest, detention and interviewing suspects and safeguarding the suspects' rights when the powers can be exercised.

Conclusion

This chapter has examined the pre-trial regulation in England and Wales (PACE) and Saudi Arabia (law in books). First, both regulations provide the police powers to stop and search, arrest, detention and questioning to investigate crime more effectively. Secondly, the regulations provide safeguards for suspects as to when the powers can be exercised. Finally, the chapter presented a comparison between Saudi regulation and England and Wales.

The PACE in practice will be examined in the next chapter, while chapter eight will examine Saudi regulation in practice with comparison with PACE.

CHAPTER SIX: PACE IN PRACTICE

- **Stop and search**
- **Entry, search and seizure**
- **Arrest and detention**
- **The rights of suspects**
- **Bail**
- **Medical attention**
- **Interview suspects**
- **Confession**
- **Right to silence**
- **Legal advice**
- **Appropriate adult**

PACE IN PRACTICE

In theory, PACE and the Saudi regulation are similar in their underlying philosophies and in their specific rules. However, we know that the law in books is not just blindly put into practice; it is interpreted (and even subverted) by front line police officers. So we also need to consider the operation of PACE in practice (how the law in books transformed). To do this we will examine the literature on PACE as a means to guiding us about the manner in which the law in books becomes translated into the law in action. This chapter examines the Police and Criminal Evidence Act 1984 (PACE) in practice and reviews the research on the operation of PACE.

Stop and search

The Police and Criminal Evidence Act 1984 (PACE) laid down police powers to stop and search persons or vehicles for stolen or prohibited articles on reasonable suspicion, and an accompanying Code of Practice gave detailed guidance on the understanding of these power (see above chapter 4). Statistics published by the Home Office show that the number of recorded stops and searches increased quite dramatically between 1986 and 1997 (Wilkins and Addicott, 1997). Research and official statistics have indicated that forces vary considerably in the extent to which they use these powers (Willis, 1983; FitzGerald, 1993; Wilkins and Addicott, 1997; FitzGerald and Sibbitt, 1997).

A study was conducted by Hull University Centre for Criminology and Criminal Justice to examine the operation of the PACE stop and search provisions. The findings are based on an examination of over 200 stop and search records drawn from 1986 and 1987, observation of street policing, and interviews with police officers in a North of England Police Force. Several crime surveys have also touched on the PACE stop and

search provisions. These include: the 1988 British Crime Survey (BCS) (Skogan, 1990; Skogan, 1994); the Hammersmith and Fulham Crime Survey (HFCS) (Painter et al. 1989); the Second Islington Crime Survey (SICS) (Crawford et al. 1990); and a survey in North London (Young, 1994).

Frequency of stop and search

On stop and searches under Section 1 of PACE, official statistics published by the Home Office Statistical Department (Home Office, various years) show a steady rise year on year in the number of searches recorded by the police: in 1986, there were nearly 110,000; by 1990 this had risen to almost 257,000; while the most recent figures, show 576,111 (Home Office, 1995-2000). The rise in stop and searches most likely reflects both an increase in police activity in the face of rising crime and more comprehensive recording of voluntary searches. Variations in these respects certainly contribute to the large differences found between forces in recorded stop and searches. The Metropolitan Police have consistently dominated the statistics: the most recent data show that 52 per cent of recorded stops and searches were made in the capital (Home Office, 1995).

No wide-ranging pre-PACE figures are available. However, Bottomley et al. (1989) compared the level of drugs searches under the Misuse of Drugs Act 1971 with PACE drugs searches. They found that the number of recorded searches doubled. They do not necessarily take this to mean that the requirement of reasonable grounds for suspicion has had no impact, but consider that recording may have increased with the introduction of standard forms readily available to all officers.

Victim surveys suggest little change in the real level of stops between pre-PACE years and the early days of the legislation. The 1988 British Crime Survey, which was able to provide a comparison with the 1982 sweep of the survey, pointed to a marginal

decrease in foot stops and no change in vehicle stops (Skogan, 1990). The report notes that this apparent stability may be the product of competing influences, some – particularly the standard of suspicion required – depressing the level of stops and others – such as the national availability of the stop and search power – pushing that level up. The SICS also found no change in the level of foot stops since the first survey, conducted in 1985 (Crawford et al. 1990). However, the overall rate of stops in this survey, as well as in the HFCS, which did not include pre-PACE data, (Painter et al. 1989) and (Young's, 1994). North London survey was over twice as high as that found by the BCS, reflecting higher use of stop and search powers in inner-city areas.

BCS data (from the 1992 sweep) shows a rise in the real level of stops, both in England and Wales as a whole and in London. The increase is confined to vehicle stops, with 16 per cent of respondents reporting such stops in 1992 compared with 12 per cent in 1988 (Skogan, 1994). What might the expected effect be on searches? It may be inferred from the BCS data that the number of searches following stops would not be expected to have changed considerably. The 1992 BCS shows that the search rate following foot stops remained at 22 per cent since the 1988 survey. The rate at which pedestrians are stopped has also not changed. In addition, although there are more vehicle stops, the search rate has declined from 10 per cent in 1988 to seven per cent in 1992 (Skogan, 1994), virtually cancelling out the effect of the increase in stops on the level of searches. In contrast, the official statistics actually show a 135 per cent increase between 1988 and 1992 in the number of searches recorded following foot and vehicle stops (Home Office, 1989; 1993). One possible inference that they may be drawn from the differing trends in the official and BCS estimates is that an increasing number of searches are now being officially recorded. There is little firm evidence of this. Approximately similar numbers of respondents in both the 1988 and 1992 sweeps of the BCS recalled officers filling out an 'official report' of the incident (Skogan, 1994).

However, it may be that respondents' memories are unreliable in this respect and that this is not necessarily evidence which refutes a rise in official recording.

There is evidence from both the BCS and the SICS that PACE may have reduced the number of stops which lead to searches. The latter provides the more striking illustration of this in relation to foot stops, with the proportion searched falling by half from 50 per cent to 25 per cent (Crawford et al. 1990). The fall shown by the BCS is smaller 29 per cent down to 22 per cent; however, the most recent survey does show a marked reduction in vehicle stops leading to searches, down from 13 per cent to seven per cent (Skogan, 1994). These figures might be taken to suggest that the requirement of reasonable suspicion to undertake a search has had some impact, particularly in areas where stop rates are high and pre-PACE searches may sometimes have been conducted with a degree of randomness (Smith and Gary, 1985). However, evidence from Young's (1994) survey in North London, suggest that the search rate in some areas may be far higher: apparently, three-quarters of those stopped on foot in this area were searched.

Measuring the success of stop and search

The proportion leading to arrest is the only nationally available measure of the 'success' rate of searches. This has declined very gradually since the introduction of the PACE power from 17 per cent in 1986 to 12 per cent in 1994 (Home Office, 1995). However, these figures do not take account of searches that lead to proceeding by way of summons or to a formal police caution. Surveys have produced figures not greatly at variance with the official statistics: for example, Young's (1994) North London survey showed an arrest rate of 18 per cent.

The most recent figures show that searches for offensive weapons and drugs are most likely to lead to arrest (in 14 per cent of cases) and those for going equipped least likely (in 7 per cent of cases). Searches for stolen property and for firearms lead to arrests in

11 per cent and eight per cent of cases respectively (Home Office, 1995). Willis (1983) found that nine per cent of recorded stops in London led to an arrest in 1981. While it is known that around one in four pre-PACE stops led to a search, stops leading to an arrest are not always preceded by a search. Pre-PACE figures were collected on stop searches in drugs cases although the outcome was measured in terms of drugs found rather than arrest. In 1979, 22 per cent of those searched were found in illegal possession of drugs (RCCP, 1981a); in 1994, arrest for drugs as a percentage of PACE searches for drugs came to 14 per cent (Home Office, 1995). Bottomley et al. found a comparable pattern in their Hull study. The apparent decline in the success rate may, they suggest, reflect more comprehensive recording of unproductive searches.

The proportion of searches leading to an arrest varies widely between forces, ranging from seven per cent in Bedfordshire and nine per cent in Derbyshire up to 21 per cent in Kent and 22 per cent in Humberside (Home Office, 1995). Possibly, this may be yet another reflection of varying practices in recording searches, although it also raises the as yet unanswered question of whether different levels of suspicion are used to justify searches. Another possibility to be considered is that the outcome of stop and search may vary according to the state of police relations with the public in particular areas. Where relations are good, it is probable that the great majority of stop and searches are carried out in a non-conflict manner. In an observational study in two areas of Surrey and the Metropolitan police area, Norris et al. (1993) found this to be the case in the great majority of over 300 stops which they observed. However, they noted that the demeanour of the person stopped had an important bearing on the outcome. It is reasonable to suggest that, where police relations with the public are not always good, encounters between the two are more likely to lead to argument and possible arrest.

Stop and searches may also be looked at in terms of the extent to which they contribute to the prevention or the detention of crime. Judged in these terms the

emphasis is primarily on the detention of offences (Brown, 1997). The most recent Home Office figures show that nearly 70 per cent of stop searches were for stolen property or drugs (Home Office, 1995). In contrast, less than a third can be said to have had a preventive purpose: for example, searches for items to be used in the course of burglary or theft (18 per cent) or for offensive weapons (5 per cent). Moreover, not only are preventive searches less frequent but they are generally less successful. Thus, arrest of those searched on suspicion of 'going equipped' run at a significantly lower rate than is the case for those suspected of carrying stolen property or drugs.

Young (1994), in a study based in selected areas of London, found that nearly eight per cent of all arrests followed a stop/search. In a more broadly based study, set in seven police forces, Phillips and Brown (1998) found a slightly higher proportion of 11 per cent. BCS suggests that the great majority of those stopped by the police are satisfied with the way the encounter is dealt with (Skogan, 1990; 1994).

It would seem that arrests following stop/searches are as effective as arrests arising in other circumstances. Phillips and Brown (1998) found that 67 per cent of those arrested following stop/search were charged or cautioned, little different than the figure of 69 per cent for those arrested otherwise. It may be deduced, therefore, that stop/searches contribute up to 11 per cent of primary clearances. However, Phillips and Brown (1998) found marked differences in the rate at which different kinds of stop/search led to charge or caution. Thus, only 51 per cent of those arrested following a search for stolen property were charged or cautioned compared with 73 per cent of those arrested following a drugs search. They argued that this suggests that the police may be prone to arresting suspects in some kinds of situation in which the threshold of reasonable suspicion has not been reached.

The study by Young (1994) in North London is the only one to have evaluated stops and searches in terms of the eventual court outcome of the case. He found that only 40 per cent of arrests following a stop/search led to a finding of guilt.

Impact of PACE on stop and search practices

The purpose of the PACE stops and search provision was to structure the use of police discretion: for example, by specifying what level of suspicion was required to activate the powers and by requiring records to be kept. Bottomley et al. (1989) observe in their Hull study that the success of PACE is dependent upon:

- a) officers understanding and internalising the relevant rules contained in PACE and Code of Practice A;
- b) being willing and able to follow them;
- c) diligently and accurately recording the details of events;
- d) supervision being willing and able to monitor records and impose sanctions where appropriate;

Procedures required by PACE and the Codes may be more an administrative irritation for the police than a benefit to the suspect (Stone, 1986). While Curtis (1986) argued that they are out of touch with the reality of street policing. Hesitation was expressed as to whether the concept of reasonable suspicion could be used as an effective constraint on police actions (Smith, 1986). Code A attempted to define it at some length, nothing that it went beyond mere suspicion, and involved some concrete basis for suspicion against a particular individual that could be considered and evaluated by an objective third person (Code A, Annex B).

Bottomley et al. (1989) rise too the issue of searches with the consent of the suspect. The inventive account of Code A said little about consensual searches, although Home Office Circular advised that voluntary search must not be used as a device for

circumventing the safeguards established in Para 1 of PACE (Home Office, 1995). Sometimes there may be no power to search, in which case officers must rely on securing consent and PACE recording requirements do not apply. It is less clear what should be done where a power to search exists, but the suspect consents to the search. Although the power is existing in these situations, it could be said that it not exercised because consent is given. This would suggest that completion of a formal record would not be needed (Dixon et al. 1990).

Reasonable suspicion

Bottomley et al. (1989) argued that it was doubtful in some cases whether the standard of reasonable suspicion was reached. Rather, they note that officers may have directed their minds to issues other than the level of suspicion in deciding whether to undertake a search as a PACE search. The majority of officers did not feel that they had been unduly affected by the introduction of a more restricted concept of reasonable suspicion.

Sanders and Young (2000) argued that to require the police to claim that they have reasonable suspicion in relation to a particular offence, when in fact they are simply generally suspicious, is to encourage them to treat the provisions of the law with contempt.

Dixon et al. (1989) point to major difficulties for officers in operating on the basis of individualised suspicion, for example, where someone is stopped late at night in an area in which burglaries are common. Young (1994) also notes that the police have to exercise considerable discretion in making stops for the obvious suspects are in the minority.

McConville et al. (1991) and Dixon et al. (1989) have underlined how attempts at rule making conflict head-on with traditional working practices. The former argue that the lack of clarity in the definition of reasonable suspicion makes it inevitable that the

police will fall back on informal methods of working. The latter note that working regulations are historical products deeply engrained in police culture. The consequence is that decisions about whether to stop and search may depend on whether a person is known to the police or on hunches about the suspiciousness of particular classes of person in specific locations at specific times. Supporting this view are the findings of studies by Skogan (1990, 1994) and by Jefferson and Walker (1992).

Young (1994) suggests that the police act on the basis of stereotyping rather than reasonable suspicion. However, he argues that there are some possible ways of overcoming present difficulties. One possibility, acting on what he terms 'democratic' suspicion according to which the police regard all members of the public with equal suspicion would produce few arrests because those suspicions would generally prove to be unfounded. Another possibility, that searches should be based on firm evidence, is often not available because the police depend heavily on information from the public.

Stop and search of ethnic minority groups

The Code of Practice stresses that reasonable suspicion can never be justified solely on the basis of factors such as a person's age or colour or stereotyped image of certain persons or groups as more likely to be committing offences (Code A, 1.7). Smith and Gray (1985) point out that racial stereotyping was responsible for the targeting of particular groups, particularly Afro-Caribbeans.

Pre-PACE studies suggested that Afro-Caribbeans were much likely to be stopped than white people (Willis, 1993; Smith and Gray, 1985; Southgate and Ekblom, 1984; Jones et al, 1986). Norris et al. (1993) found that blacks (and especially young blacks) were more likely to be stopped by the police than whites. Several post-PACE studies are to similar effect (Skogan, 1990 and 1994; Crawford et al., 1990; Young, 1994). In considering the significance of these finding it is necessary to bear in mind that the

black and white populations have different age and class structure (FitzGerald, 1993). In particular, the Afro-Caribbeans population has a high concentration of young people and is predominantly drawn from the working class. Several commentators have pointed out that researchers comparing black and white people will inevitably find discrimination, because they are comparing dissimilar populations (Walker et al, 1990; Jefferson, 1993; Reiner, 1993). Skogan (1990) found that young Afro-Caribbean males were only slightly more likely than their white counterparts to be stopped. And, on re-analysing the SICS data, Young (1994) found that young black working class males were only slightly more likely to be stopped than whites.

Sanders and Young (2000) argued that there is no doubt that many local communities get intensely angry and feel harassed as a result of stop and search, especially when they perceive these powers to be exercised in a discriminatory way. Bucke (1997) found that 33 per cent of Afro-Caribbean males report being stopped, as compared to 21 per cent of white and Asian males. He also, argued that Afro-Caribbeans were more likely than Whites and Asians to be searched once stopped, more likely to be arrested, and more likely to be repeatedly stopped.

Walker (1990) and Jefferson (1993) found that, in poorer areas where the majority of black people lived, they were less likely than white people to be stopped, but in areas where relatively few black people lived they were more likely to be stopped.

Mainly crime surveys have also examined the experiences of Asians. It would appear that the likelihood of their being stopped tends to be similar to or lower than that for white people (Skogan, 1990 and 1994; Walker et al., 1990; Young, 1994).

Multiple stops

Studies suggest that a proportion of those stopped and searched are likely to go through this experience repeatedly, although estimates vary between studies. These

experiences may reflect differences in police practice from area to area. Painter et al (1989) found that 35 per cent of their sample in Hammersmith and Fulham had been stopped and searched more than once during the past year. In contrast, Young (1994), in his Finsbury Park survey, found that 16 per cent of respondents claimed to have been stopped and searched more than ten times. The average number of stops and searches per person ranges from two in the SICS (Crawford et al., 1990) to six in Young's (1994) survey.

Smith and Gray (1985) found that it was considerably more likely that Afro-Caribbeans would be the subject of multiple stops by the police. In the 1988 sweep of the survey, the difference between two groups (Afro-Caribbeans and whites) did not reach statistical significance. Skogan (1990) pointed out that twelve per cent of whites, who were stopped, recalled being stopped more than once while the comparable figure for Afro-Caribbeans was 19 per cent. In 1992 sweep, 15 per cent of Afro-Caribbeans recalled three or more stops during the past year compared with three per cent of the population as a whole (Skogan, 1994). Moreover, Young (1994) found that members of the black community who were stopped were, on average, stopped eight times during the course of the past year, compared with five times for white people. The number of stops and searches per 100 of the black population was 78 compared with 22 for white people (Painter et al, 1989). Afro-Caribbeans were more likely than whites and Asians to be repeatedly stopped (Bucke, 1997).

Both the BCS and other studies are in agreement that Asians are less likely than white people to be subject to multiple stops (Skogan, 1990 and 1994; Crawford et al, 1990; Painter et al, 1989; Young, 1994).

Powers of entry, search and seizure

PACE put on a legal basis additional police powers to enter and search premises and seize evidence, while introducing safeguards against the abuse of these powers (Code B). With the new powers introduced was that of access to personal information relating to a serious arrestable offence, which is naively held in confidence by third party.

There are two main studies about the operation of the new powers. The first is the Hull research (Bottomley et al., 1989), which paid some attention to this area in a more wide-ranging study of the exercise of police voluntary powers.

The second is a study of search and seizure carried out by Sheffield University, reported mainly in Lidstone and Bevan (1989). The research had four main aims:

- to study the use made of new search and seizure powers provided by PACE.
- to consider the safeguards provided by PACE against abuse of these powers.
- to measure the impact of these powers on the people against whom they are exercised.
- to monitor the impact of the PACE powers in the wider context of police powers of search and seizure existing before PACE and those which survive the Act.

PACE requires the police to keep a register of all searches (Code B, 8.1) and to record confidential key items of information about each search (Code B, 7.1). These records were a main foundation of information for the Sheffield study, in which a total of 861 search records was examined. Moreover, the researchers interviewed more than 260 police officers involved in carrying out authorised searches and over 130 householders of premises searched. In addition, the researcher spent more than a year with police officers and was able to witness a number of searches being conducted.

Entry and search to make an arrest

The police have the power to enter and search premises to execute an arrest warrant or arrest a person for an arrestable offence (PACE, S.17). Both Bottomley et al. (1989) and Lidstone and Bevan (1989) found this power was rarely used. The former study noted that searches mainly appeared to be recorded where entry had to be forced or damage was caused or whether there might be other repercussions for the officers concerned.

Searches with consent

Lidstone and Bevan (1989) found that three-quarters of entries to search premises for stolen property or evidence of an offence were carried out with the consent of the suspect or occupier. They noted that the clarification of police search powers by PACE and the inclusion in Code of Practice B of provisions designed to ensure that consent is true and informed would be expected to have reduced reliance on consent. Actually, they found that consent still figured significantly, with nearly one-third of searches being thus categorised. Bottomley et al. (1989) found a fairly low figure of 15 per cent, perhaps reflecting differences in practice between forces or in recording or both.

Code B contains various safeguards in relation to consensual searches. For instance, record keeping requirements apply equally to such searches. Bottomley et al. (1989) found significant variation in their research force in recorded use of consensual searches, even though mainly officers maintained they made such searches and in generally similar circumstances. The variation in recorded use appeared to stem from a misunderstanding of the requirement of Code B.

Both Bottomley et al. (1989) and Lidstone and Bevan (1989) found that officers in general preferred to act with consent, with legal powers available only as a back-up. In

the latter study, it was found that consent was often obtained in preference to using an available legal power.

Success rate of searches

Whether searches lead to the finding and seizure of the property required is a useful indication of the effectiveness of the significant safeguard that there must be reasonable grounds suspecting that stolen property or other evidence are to be found on the premises searched. Lidstone and Bevan (1989) found that it is not a simple matter to assess the 'success rate' of searches in these terms, because search records do not always state clearly what was required in the search. It is common for reference to be made merely to 'evidence of offence' or 'stolen goods'. They therefore relied on the rather basic criterion of 'successes' of whether or not any property was seized. Actually, property seized because it is believed to be stolen may later turn out not to be. They found that searches appear to play a relatively small part in the investigation and solution of offences. Also, they found that one search was carried out for every 17 offences detected.

Lidstone and Bevan (1989) found that about half of those whose premises are searched are satisfied with the conduct of the search. However, there are frequent complaints that officers do not identify themselves, copies of warrants are not provided and officers do not state their search powers.

Arrest and detention

The number of arrests following stop/searches fell in 1999/00 by 11 per cent, from 121,300 in 1998/9 to 108,000, although this figure is as high as or higher than any previous year except 1998/9. As for stop/searches, this was the first reduction in arrests since PACE began, although the fall was not as great as for stop/searches (21 per cent).

Again, as for stop/searches, reductions in the number of arrests occurred for all reasons for arrest apart from firearms, which rose by seven per cent. However, the size of the reductions of stop/search did not mirror the overall reduction quite so closely, in that arrests for 'going equipped' fell by 23 per cent, but those for the other category decreased by only one per cent (Home Office, 2001).

McConville et al. (1991) found that the police were using arrest as much as ever, regardless of necessity. They also found that over 98 per cent of adults and 90 per cent of juveniles were arrested rather than summonsed. They draw upon this fact and anecdotal evidence from interviews they conducted with officers to argue that the police continue to rely on arrest because of the advantage of interviewing suspects on police territory.

Smith and Gray (1985) and Holdaway (1983) argue that arrests are largely based on non-legal criteria and legal powers are fitted around the decision to arrest rather than vice versa. Brown (1997) argues that the criteria employed have historical roots, and are resolute by police purpose and organisational pressures. Among the factors which may influence arrest decisions are: the need for the police to establish control when their authority is challenged; and suspiciousness of particular classes or groups of people, particularly those known to the police.

Dixon (1992) points out that police culture is relatively immutable over time and between countries. Although this fails to take account of evidence of cultural changes within the police service in the UK. Brown's (1997) suggestion that non-legal criteria continue to determine arrest decisions may be valid. However, if the evidence is in general sufficient, it is probable that the PACE requirement of reasonable suspicion may have taken priority over other criteria. On the other hand, it may have interrelated with these criteria so that while non-legal criteria are significant in drawing police attention

to the possibility of arrests. arrests are made mostly where reasonable grounds for suspicion also exist.

McConville (1993) points out that, where practicable, the police are generally careful to collect any available independent evidence before making an arrest (although, often such evidence is not available). He found that there were few cases in which applicable evidence was intentionally ignored by the police prior to arrest. There is evidence from other studies that PACE has had an impact on arrests which runs against McConville argument. Relative to the police's partiality for arrest over summons, neither Bottomley et al. (1989) nor Irving and McKenzie (1989) found evidence to confirm fears. In Bottomley's study, police officers interviewed maintained that the new powers had made arrest easier where minor offenders refused to provide sufficient details for service of a summons and the existence of the powers of arrest sometimes enable them to secure co-operation from members of the public more readily in providing such details

McConville (1993) classified the evidence at arrest as 'strong' in only a quarter of a sample of post-PACE cases in his RCCJ study on confirmation. However, he classed evidence as 'strong' or 'weak' solely on the basis of its source.

Ethnic minorities

Both pre-PACE studies (Stevens and Willis, 1979; Smith and Gray, 1985) and post-PACE studies (Home Office, 1989c; Walker et al., 1990) found that Afro-Caribbeans are more likely than white people to be arrested. Phillips and Brown (1998) found that, in eight out of ten police stations they studied, black people were between two and eight times more likely to be arrested than whites.

FitzGerald (1993) notes that the demographic factors (particularly the higher proportion of young men in the Afro-Caribbean population) appear to explain much of

the difference but by no means all. Therefore, it appears that young Afro-Caribbean males are still arrested at a higher rate than whites (Home Office, 1989c

Painter (1989) argued that the arrest decision itself is influenced by the race of the suspect, in the sense that police accept a lower standard of evidence to justify the arrest of ethnic minority suspects such as Afro-Caribbean.

Norris et al. (1993), who observed stops of over 300 people, including over 80 black people, found that there was no evidence that such encounters were any more conflict or troublesome than those with whites. They pointed out that officers were well aware of the possible for problems in such situations and intentionally set out to be non-confrontational.

The authorisation procedure

On the arrival of a suspect under arrest, custody officers must first ascertain whether there is sufficient evidence to charge (PACE, s.37 (1); if there is, they must decide whether to charge or release the suspect (s.37 (7)). If there is insufficient evidence to charge, they must release the suspect, unless they have reasonable grounds for believing that his or her detention is necessary 'to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him' (s.37(2)).

If the conclusion of the custody officer's assessment is that the suspect should be detained, detention is authorised from this time. The significance of this time is that reviews of custody are calculated in relation to it. However, the maximum length of detention is calculated from the time of arrival. Morgan et al. (1991) note that there may in fact be a considerable gap between a suspect's arrival at the station and the time detention is authorised if the custody area is busy. In effect, periods of time that have not been officially authorised are spent in police custody. They found that the time of

authorisation which custody officers entered on the custody record varied. Some recorded the time that suspects were given their rights.

Deciding whether to authorise detention

The custody officer's assessment was intended to filter out unnecessary detentions. Numerous studies have noted that this point is not being achieved. Morgan et al. (1991) note that, although forces vary in the extent to which arresting officers are required to recount the evidence against the suspect, a failure to authorise detention was almost unheard of. McKenzie et al. (1990) found no evidence of any reduction in the numbers of people in police custody or reported for summons without arrest.

Bottomley et al. (1989) point out that the reception of suspects into custody was mainly a routinised formality and arresting officers were not normally required to provide considerable details of the offence. Irving and McKenzie (1989) found that custody officers did not always know much of the circumstances of arrest. McConville et al. (1991) note that custody officers readily go along with the wishes of case officers in detaining suspects. They found a failure to authorise detention in only five out of 1,080 cases in their sample. In the great majority of cases where detention was authorised, it was on grounds specified in PACE, but in just over 10 per cent of cases, the reasons did not fall into any legal category.

Dixon et al. (1990), drawing on the Hull study, which included numerous hours of observation in custody areas and interviews with custody officers, argue that custody officers are marked out by a difference of outlook from investigating officers. Maguire (1988) and Irving and McKenzie (1989) have also drawn attention to this point among custody officers. Dixon (1992) and Bottomley et al. (1989), also point out that custody officers have an unwillingness to lay themselves open to the risk of discipline as a

motivating factor in ensuring PACE rules are adhered to. They are unwilling to risk their jobs in order to allow investigating officers to obtain admissions.

The rights of suspects in detention

On arrival at the police station, the custody officer must ensure that persons arrested are informed about their rights. These include, first, a right to inform someone that they have been arrested. Secondly, any persons arrested have the right to contact and consult a solicitor in private. If they do not wish to or cannot contact a solicitor, or do not have one, free advice is available from a duty solicitor who can be contacted round the clock. Thirdly, arrested persons have the right to have access to PACE and the codes (PACE, Code of Practice C).

The police are not allowed to stop suspects exercising these rights. They may delay their exercise, but only under very strict conditions (Code of Practice C). Brown et al. (1992) found that the police applied their delaying power to around one per cent of requests in 1988 but only 0.2 per cent of requests in 1991. They also found that very few people ask for visits, and less than 10 per cent of suspects ask for a phone call.

Even though suggestion is formally delayed rarely, informal delay is more common. Dixon et al. (1990) suggest that informal delay in intimation may be deliberate, for example, when officers who wish to search premises wait to inform a suspect's family of arrest until they arrive to search his/her house. They also point out that informal delay is often an unintentional product of pressure of work. It takes time for officers to get around to informing a relative or friend of someone's arrest. The result is that the provisions on intimation, while embodying due process value, are not fully adhered to. However, since s 56(1) merely provides that intimation should be done as soon as practicable, it is difficult for suspects to demonstrate that the law has been broken. Thus there are no reported cases where delay of intimation or refusal to intimate was in issue

(Mirfield, 1997). Requests for phone calls also frequently appear to be informally delayed or ignored. Brown et al. (1992) found that custody records recorded requests in 7-8 per cent of cases, but they observed requests being made in 10-12 of cases. Additionally, it is no use telling suspects what rights they have if they do not understand what they are being told. Sanders and Young (2000) argue that police often made little or no effort to help suspects understand their rights when PACE was first enacted, and it appears that little had changed 10 years later.

Under the PTA 1989 suspects detained have the same rights as other suspects, but the police allowed delaying the granting of these rights on broader grounds than usual (Walker, 1992). Brown et al. (1992) found that nearly half of all PTA suspects request that someone be informed, and delay was imposed (often for more than 24 hours) in around three quarters of these cases.

Length of pre-charge detention

Under s 41(1) of PACE, if the offence is not a serious arrestable offence then the suspect may be detained without charge for up to 24 hours after 'relevant time'. For serious arrestable offences, s 41(1) provides that detention may be for up to 36 hours initially.

Bevan and Lidstone (1995) point out that the 'relevant time' is usually the time of arrival at the police station, but not for 'volunteers', for whom it is the time of arrest. Several studies have found decreases in detention length. Mackay (1988) found that over 80 per cent of suspects in a post-PACE sample drawn from 1986 had been released by the six-hour mark, compared with three-quarters in 1982. Morgan et al. (1991), drawing on samples of 1,800 pre-PACE and 1,800 post-PACE custody records, found the average length of detention fell from six hours and 20 minutes to five hours and 20 minutes. Irving and McKenzie (1989) found a significant reduction in their 1986 sample:

the average figure fell by over two hours to eight hours and 35 minutes. They also found some evidence that those detained for less serious offences, who are typically held for short periods, were actually held for longer under PACE. Morgan et al. (1991) found a clustering of detention times around the five- to six- hour mark. They suggest that officers may let detention drift up to the six-hour mark because they work on the principle that they are allowed up to six hours before they need to provide justification for holding suspects longer.

The length of detention is related to a number of variables. Thus, it varies according to the outcome of detention. Those cautioned, summonsed or released without charge are held the shortest time and those charged the longest (Irving and McKenzie, 1989; Bottomley et al., 1989; Brown, 1989; Morgan, 1991). Those released, for example, are generally held for around four hours; those charged are held for six hours or more.

Bottomley et al. (1989) pointed out that the requirement to secure the attendance of appropriate adults for juveniles may have increased detention times for this age-group juveniles were held for more than an hour longer on average in their post-PACE samples of cases. Brown (1989) drew attention to longer detention times for those who receive legal advice.

Bail

The suspects charged with an offence should be released, with or without bail, unless specific conditions apply (PACE, s38 (1)). These relate to the probability that the suspect will abscond, reoffend or interfere with witnesses. Burrows et al. (1995) found that the most frequently used grounds for refusal of bail were the risk of the suspect failing to appear and to prevent the suspect from causing physical injury or causing loss or damage to property.

Brown (1989) found significant differences between areas (32 stations were examined) in the rate at which suspects were remanded in police custody. Figures ranged from 13 to 32 per cent of those charged. He suggests that some of this variation is explained by differences between areas in the seriousness of offences. However, even for comparable offences, there was substantial difference: the proportion of burglary offenders kept in custody ranged from 21 per cent to 72 per cent. Morgan and Pearce (1988), in their study in Brighton and Bournemouth, also found different bail rates for similar offences. Thus, 47 per cent of violent offenders were remanded in custody at one station, compared with just 27 per cent at the other, and 41 per cent of fraud suspects compared with 22 per cent.

Brown (1991) points out that variation in the amount of juveniles in the arrest population at different stations may also help explain variations in their bail rates because juveniles are more likely to be bailed than adults. However, there remains significant difference between stations in the surrendering of bail for offences in which juveniles are not greatly involved. The differences in bail rate suggests that the PACE principles are being applied differently from place to place. Hood (1992) found that black offenders were considerably more likely to be remanded in custody between court appearances than white or Asian offenders.

Medical attention

The Codes of Practice require a police surgeon to be called in all cases where a detainee appears to be physically ill or mentally disordered, is injured, fails to respond normally to questions or conversations, or otherwise appears to need medical attention (C 9.2).

Bucke and Brown (1997) found that fourteen per cent of all detainees were given medical attention during their time in police custody. The majority of these detainees

had physical injuries sustained in connection with the offence for which they were arrested. They also found that when medical attention was required, a police surgeon usually attended the station, rather than officers giving medical attention.

A study by Greater Manchester (1986), shortly after the introduction of PACE, found that medical costs had risen to two or three times their pre-PACE level. In the first quarter of 1986, doctors attended five per cent of prisoners throughout the force. Brown (1989) found that in over half of these cases the police summoned a doctor on their own initiative; in a third this was at the detainee's request.

Robertson (1992) found that nearly 10 per cent of call-outs were to examine those suspected to be under the influence of drugs. A further 10 per cent concerned detainees who were believed to be mentally ill or handicapped. Brown (1989) found that the two groups requiring medical attention most frequently were missing persons, generally because of concern over their mental condition, and motoring offenders, usually to take blood samples from suspected drink-drivers. Brown (1989) and Robertson (1992) found that there was considerable variation between stations in the proportion of cases involving medical call-outs, with the highest rates (up to 25 per cent) being found in the Metropolitan Police.

Interviews with suspects

The PACE requirements on the interviewing of suspects reflect the Royal Commission on Criminal Procedures (RCCP's) concern with minimising the risk of false or unreliable confessions. At the same time, they are designed to make the police's task easier by providing clear rules about the conditions under which interviews are to be conducted. Detailed guidance on interviewing is found in Codes of Practice C (on the detention, treatment and questioning of suspects) and E (on tape recorded interviews).

The purpose of interviewing

The purpose of interview is to obtain from the person concerned their explanation of the facts and not necessarily to obtain an admission. Several studies have considered why police officers undertake interviews (Irving and McKenzie, 1989; Williamson, 1990; Moston et al, 1990; McConville and Hodgson, 1993; Stockdale, 1993). Williamson (1990) provides some evidence that under PACE, the purpose is less often to obtain a confession. However, there are grounds for suspicion whether these conclusions are reliable.

Irving and McKenzie (1989) found a considerable decline between 1979 and 1987 in the proportion of cases in which the stated purpose of interviews was to obtain a confession as the primary evidence against the suspect. This was quoted as a reason for interviewing in 15 per cent of cases in 1987 compared with 25 per cent in 1979. Far more often than before, the reason was to secure a confession as supplementary evidence. In addition, both they and McConville (1993) point to anxiety about gathering more evidence to strength the case after arrest but before interview. The latter found this occurred in over half of cases.

Irving and McKenzie (1989) found that a significant amount of interviewing is for what they term 'directorial' purpose. There may be prima facie evidence, but questioning is considered necessary to establish *mens rea*. According to them, the quantity of interviewing for this purpose has changed little under PACE.

Williamson (1990) found that obtaining a confession has become a less significant purpose. He found that, in a questionnaire survey of 80 detectives in the MPD, only 12 per cent rated the main purpose of interviewing suspects as being to obtain a confession. The majority considered that the purposes of interviewing were to arrive at the truth, obtain an explanation of the facts or secure evidence.

Moston et al (1990), in a study that included a survey of detectives and interviews over 1000 cases at nine MPS stations, found that 80 per cent of responses pointed to the confession as the objective of interviewing. Confession was viewed as the main evidence in 30 per cent of cases and in 50 per cent as supplementary evidence. The figure of 80 per cent is not much higher than the overall amounts of cases in Irving and McKenzie's study in which confession was referred to in some guise as the purpose of interviewing. The amount of cases in the Moston study in which confession was viewed as providing the main evidence was higher. It may be taken to support the view that, in concrete cases (Williamson, 1990 and Stockdale, 1993) detectives still view confession as having essential significance.

Confession

It has often been supposed that the police see the main purpose of interviewing as the obtaining of a confession, and this is entirely normal. There is a secondary purpose, such as the obtaining of criminal intelligence, but confessions are the primary objective. A variety of studies have pointed to the centrality of confessions in the investigative process, for they are viewed by the police as a quick and useful way of clearing up crime (Mawby, 1979; Morris, 1980; McConville and Baldwin, 1981; McConville et al., 1991; Evans, 1993 ; Mortimer, 1994). There have been recent attempts to change this 'confession culture'. A combined Home Office and ACPO plan has sought to inject a more open-minded approach into investigative interviewing, stressing the significance of allowing suspects to present their own version of events and of keeping the possibility of the suspect's innocence clearly in view (Mortimer, 1994; Central Planning and Training Unit, 1992a and 1992b).

Softley et al. (1980) and Irving (1980) suggest that just over 60 per cent of interviews led to confessions. Irving and McKenzie (1989) give the opportunity to compare the

confession rate at the same location before and after the introduction of PACE. They found no clear-cut effect. In 1986, in spite of a decrease in the use of tactics to a quarter of their 1979 level, there was actually a minor rise in the amount of suspects admitting offences during interviews, from 62 per cent to 65 per cent. In 1987, when there was some return to the use of tactical interviewing, the admission rate fell to 45 per cent. However, the 1987 sample contained a higher amount of serious offences than the earlier samples and not directly comparable with them.

McConville (1993) found that in a sample of 465 cases drawn from six stations confession were obtained in 59 per cent. The same figure is given by Moston and Stephenson (1993), drawing on a sample of 558 cases from three forces. Phillips and Brown (1998) found a somewhat lower admission rate of 55 per cent in a sample of nearly 3,000 suspects interviewed at ten police stations, while a similar figure of 54 per cent was found by Sanders et al. (1989) in a sample of nearly 250 cases, also at ten police stations.

The confession rate varies in relation to the strength of the evidence. Moston et al. (1992) found that 67 per cent of suspects made admissions where the evidence was strong, 36 per cent where it was moderate and 10 per cent where it was weak. McConville (1993), looking at suspects in general, found a similar but less noticeable pattern. Where the evidence was strong, 64 per cent confessed, compared with 46 per cent where it was weak. Phillips and Brown (1998) used a rather different measure of evidential strength, looking at whether there was sufficient evidence to charge at the point of arrest. They found that 67 per cent of suspects against whom there was sufficient evidence at this point confessed, compared with only 36 per cent where the evidence had not reached this standard.

Interviewing outside police station

Pre-PACE research suggests that a significant proportion of suspects were questioned by the police prior to arrival at the police station. Softley et al. (1980) and Irving (1980) refer to this practice. In the previous study, 43 per cent of all suspects had either been interviewed or had given unsolicited information away from the police station. In 60 per cent of cases they had provided information the police considered would assist with the case in some way.

The inventive account of PACE Code C did not prohibit out of station interviewing. However, it set out that an accurate record should be made of any such interviews (11.3), but did not describe what amounted to an interview, other than in relation to interviewing at the police station (12A). The amended Code contains much tighter provisions: it contains the circumstances in which interviews may be carried out away from the police station (11.1), applies a amended description of an interview to such interviewing (11A), have more difficult record-keeping requirement (11.5 to 11.12), and also requires a written record to be made of unwelcome frequent that might be relevant to the offence (11.13).

Brown et al. (1992) compared practice before and after the introduction of PACE, which located tighter controls on out of station interviewing. Moston and Stephenson's (1993) study, which was carried out after the introduction of PACE, examined the extent of and reasons for interviewing away from the police station, the records kept, and the effects of such interviews on the later development of cases. Both studies found such interviewing (whether amounting to an interview or not) in considerable minorities of cases. However, Brown found that the frequency of out of station interviewing had actually declined with the introduction of the revised Codes, occurring in 19 per cent of cases in the first stage of the study, compared with 10 per cent in stage two. He suggests

that most interviewing in stage one would have amounted to an interview, very little (probably around 15 per cent) would have amounted to interviewing in stage two.

Moston and Stephenson (1993) point out that eight per cent of suspects were questioned before arrival at the police station. Most commonly, it appeared that it was the suspect who started the interview. The second most frequent reason for interviewing was to inquire about the suspect's involvement in an offence. They note that there must be some doubt about how many 'interviews' fell within the revised Code's definition and consider that well over half may not have done. Bottomley et al. (1989), in their Hull study, found a considerable minority of officers admitted that they frequently obtained 'some explanation of the suspect's conduct' was frequent before taking them to the police station. In this study, the practice may have been prejudiced by the fact that police station interviews were still at the same time noted and pre-interview 'discussions' may have been seen as necessary to help the flow of the formal interview. Sanders et al. (1989) also point to the practice of 'car-seat' interviews in their study of the duty solicitor scheme and suspects' accounts. Evans (1993) found that pre-interview questioning of juveniles occurred in quite a number of cases.

Recording of interviews

There is no statutory basis for the audio or video recording of interviews, but Code of Practice E now sets out guidance for recording. Baldwin (1992) argue that little difficulty seems to be caused by audio recording itself: the problems are rather that the police choose to ask some questions outside the police station and that there is a tendency to rely on police summaries rather than to listen to the tapes themselves.

Baldwin and Bedward (1991) and Baldwin (1992a) have recognized significant shortcoming in ROTIs. They found that around half of ROTIs were deficient. A third provided misleading or distorted accounts of the interview. Baldwin (1992a) sought to

determine whether best practice found in some forces had resulted in noticeable benefits in the preparation of interview record. One of the forces examined (Northamptonshire) used civilian summarisers, while another (Hampshire) used civilians to type out passages marked by officers in the case. His overall conclusion is that, in spite of numerous years of police practice in their production and Home Office guidance, ROTIs remain 'crude and risky' documents in a high percentage of cases, and fail to reflect exactly what was said in the interview room. He rates the prospect for improving the position significantly as poor. Police officers are unlikely to be inclined to summarise complex material in a way that can safely be relied on by other parties, mainly the defence.

Admissions

Moston and Stephenson (1993) and Brown et al (1992) put the amount of suspects who admit their guilt prior to arrival at the police station at six per cent and nine per cent correspondingly. The former study's figure is lower, perhaps because it is based only on interviews, while the latter study also included admissions made during other questioning or in unsolicited comments.

Both estimates possibly understate the real extent of admissions outside the police station, because they do not take full account of those made prior to arrest. McConville (1993) found that over a third of suspects who are later charged confessed during interviewing prior to arrest and a more than 15 per cent made damaging admissions.

Moston and Stephenson (1993) point out that those who had been questioned outside the station were considerably more likely than other suspects to admit offence during a succeeding interview at the police station. Where admissions had been made prior to arrival, they were constantly repeated at the station. In addition, where arresting officers had carried on non-offence connected discussion prior to arrival, suspects were also

more likely to make admissions at the station. They suggest that the latter finding may have innocent connotation and suggest simply that early rapport-building makes payment later. Or it may reflect that some suspects are more prepared to chat and that they are also those who are more likely to confess. Further troublingly, the finding may suggest that things said during the conversation may have acted as later incentive to confess.

Moston and Stephenson conclude that there is a need for all conversations away from the police station to be recorded (on transportable, hand-held tape-recorders). They found that tape record of police station interviews represents only a part of what goes on between suspect and police officer. This actuality barely ever comes to light, however, because the police are in general disinclined for any suggestion to appear on the taped record of interview that any prior questioning or conversation has happened.

The right of silence

The new provisions regarding the right of silence have been one of the greatest changes in criminal justice over recent years. Under the CJPOA, courts are now allowed to draw such deductions as appear proper from a person's use of the right of silence. These deductions can be drawn in four circumstances. The first is when a defendant uses a defence in court which they failed to mention earlier when questioned or charged by the police (s34). The second is when a defendant aged 14 years or over refuses to give evidence at trial (s35). The third and fourth are when a suspect, having been issued with a 'special warning' under the Act, fails to account for incriminating objects. An important issue is whether sections 34, 36 and 37 have had any effect on the extent to which suspects use the right of silence.

Brown (1994) draws attention to differences between studies in their operational definition of 'silence', and, accordingly, in their estimates of its frequency in police

interviews. The most important variation has been in the way in which discriminating non-response to questions has been categorised. As the law stood prior to the CJPOA, the effect of a partial refusal to answer questions was that the interview became acceptable as evidence and in some circumstances, inferences could be drawn from the suspect's silence.

Leng (1993) argued that temporary refusal to answer questions should be discounted, since neither under the present or pre-existing law could these lead to adverse inferences being drawn against the suspect. Such temporary silences may occur, often on legal advice, where the police have been disinclined to reveal the extent or nature of the evidence (McConville and Hodgson, 1993). Moston et al. (1992) have noted that it is not uncommon for suspects who have exercised their right of silence, possibly in such circumstances, subsequently to admit the offence or make damaging statements. They argue that this occurs in up to a fifth of right of silence cases.

Softley et al. (1980) found that four per cent refused to answer all questions and eight per cent refused to answer some questions, making a total of 12 per cent exercising their rights of silence. Irving (1990) found that eight per cent refused to answer questions at all or refused to answer all questions of substance. Other pre-PACE estimates of silence are of more limited value because they relate to particular sub-groups of suspects. For example, Zander (1979) reported a rate of four per cent for a sample of those tried at the Old Bailey. McConville and Baldwin (1981) found rate of seven per cent and four per cent for defendants appearing in court cases in London and Birmingham respectively. The Birmingham figure is the same as that found by Mitchell (1983) in a study at Worcester Crown Court.

Bucke and Brown (1997) argue that comparisons with the past indicate a significant reduction in the use of the right of silence. They also argue that suspects were found to

be less likely to give complete 'no comment' interviews or refuse questions selectively. Silence is commonly used not only to protect the suspect but to avoid implicating others.

Phillips and Brown (1998) found that ten per cent of suspects refused to answer all questions during interviews and 13 per cent selectively refused to answer questions. Total 'no comment' interviews were more common in London (in 2 per cent of cases) than elsewhere (8 per cent). They found that among the suspects most likely to exercise their right of silence were: those who had received legal advice; those held for more serious offences; males; black people; and those with a criminal record.

McConville and Hodgson (1993) found that in 60 per cent of cases in which suspects had received legal advice they remained silent during interview, although they had not received advice to this effect. In the majority of these cases the legal advisor had not actively urged the opposite course, but simply went along with their client's desire to remain silent or preferred to give no clear advice. However, in a quarter of these cases suspects remained silent despite their advisor advising to answer.

Zander and Henderson (1993) found that those pleading not guilty to all charges were more likely to have exercised their right of silence than those pleading guilty. They also found that many of those who refuse to answer police questions plead guilty. Around half of silent suspects pleaded guilty to some or all charges, compared with just over 60 per cent of suspects who did not exercise their right of silence.

Legal advice

The Code of Practice states that, subject to exceptional circumstances, people in police detention must be told that they can at any time communicate with a legal advisor free of charge (C 6.1). Legal advice is a key right for those held in police custody. There is strong evidence from studies that the demand for legal advice at the police station has been increasing in recent years (Brown, 1989; Brown, Ellis and Larcomb, 1992).

Requests for legal advice

A number of studies have shown that both the introduction of PACE in 1986 and the first revision of the Code of Practice in 1991 were marked by rises in request for legal advice. Pre-PAEC studies gave estimates of detainees requesting legal advice which ranged from three to 20 per cent (Softley et al., 1980; Bottomley et al., 1989). The introduction of PACE saw this rise to around 25 per cent (Brown, 1989; Sanders et al., 1989; Morgan et al., 1991). While the first revised Codes of Practice witnessed a further rise to 32 per cent (Brown, 1992).

The studies have shown variations in requests for legal advice to be due to a number of factors. These include:

- the kinds of offences found at each station, with type of offence and level of seriousness important factors in determining request for legal advice (Brown, 1989; Phillips and Brown, 1989).
- factors centring on the suspect including his or her ethnicity, employment status, physical and mental condition on arrival at the police station, and issues concerning bail and previous convictions (Phillips and Brown, 1998).
- differences in the availability of legal advice between areas (Brown, 1989).
- the way in which the right to legal advice is conveyed by custody officers to the suspect (Morgan et al., 1991; Sanders et al., 1989; Bottomley et al., 1989)
- more intangible factors including culture differences between areas, suspects views on the usefulness of legal advice emanating from experience and folklore, general views of the police, and the station where the suspect was taken on arrest (Morgan et al., 1991; Phillips and Brown, 1998).

Bucke and Brown (1997) found that 11 per cent of cases requests for legal advice did not lead to its provision. The most common reasons were that suspects changed their

minds, were released before a solicitor could attend, or agreed to see a solicitor in court rather than at the station.

Legal advice and police interviews

Brown (1989) found that legal advisers attended around 12 per cent of all police interviews. However, there are significant regional differences. The same study found attendance rates at individual stations ranged from five per cent to 20 per cent. In a further study of burglary investigation, attendance at interviews at the three contributing stations ranged from just three per cent up to 37 per cent (Brown, 1991). Sanders et al. (1989) found that one important factor governing attendance at interviews was whether advice was given by own or duty solicitors, with the latter being far less likely to attend. They also found that a legal advisor attended at least one interview in two-thirds of cases in which advice was provided. Legal advisers attended police interviews in 81 per cent of cases in which they consulted with their clients at the police station.

Brown et al. (1992), looking at the impact of the revised Code of Practice, found that legal advisers attended nearly 60 per cent of interview cases in the first half of their study. In the second stage, the figure had fallen to 42 per cent. This may be because the rise of demand for legal advice has placed increased pressure on legal personnel. Sanders et al. (1989) and Brown et al (1992) found the attendance rates ranging from 23 per cent up to 92 per cent. The latter study, looking only at those cases where legal advisers consulted with clients at police stations, found that the attendance rate at interviews still ranged from 28 per cent to 86 per cent. Brown (1989) found that legal advisers attended just eight per cent of interviews for shop-lifting compared with 30 per cent of robbery interviews.

The time factor

Sanders et al. (1989) and Brown (1989) point out that solicitors are normally contacted quite rapidly and are obtained within half an hour in between 65 per cent and 80 per cent of cases. Brown's study found that own solicitors were slightly faster to respond, because requests for a duty solicitor had to be filtered through a paging service. Both studies and Brown et al. (1992) draw attention to very lengthy delays in a minority of cases. A longer delay of over two hours has been reported in Brown's (1991) study of burglary cases; however, this study was based on a much smaller sample of stations than the others and may reflect local difficulties rather than the general situation.

McConville and Hodgson (1993) reports lengthy delay in a minority of cases and it is common practice for advisers to be notified to attend the station when investigating officers are ready to interview. However, Brown (1989) also report that a considerable amount of requests for solicitors made during office hours led to delays of four or more hours before a solicitor could attend. Naturally, delays were caused where solicitors were busy in court or attending meeting with clients.

Bucke and Brown (1997), in over 12,000 cases, found no recorded example of legal advice being formally delayed.

Appropriate adults for juvenile and the mentally disordered or the mentally handicapped

Under PACE the police must provide an 'appropriate adult' for juvenile and mentally disordered or mentally handicapped detainees (C 3.9). The role of the appropriate adult is to provide support to a vulnerable person in custody which may involve: giving advice, ensuring police interviews are conducted properly, and facilitating communication.

A person, including a parent or guardian, should not be an appropriate adult if he or she is involved in the offence, for example as a suspect, witness or victim (C 1C). People acting as solicitors or lay visitors should also not be appropriate adults (C 1F). In addition, admissions made by a suspect to an appropriate adult do not have the same status as those made to a legal advisor, and therefore can be disclosed to the police. In cases where the detainee appears to be suffering from a mental disorder, PACE states that in addition to an appropriate adult being contacted, the police must call in a registered medical practitioner and an approved social worker to assess the detainee at the police station (C 3.10).

Appropriate adult for juveniles

A variety of studies point out that juveniles constitute between 14 per cent and 19 per cent of those detained (Bottomley et al., 1989; Brown, 1989; Brown et al., 1992; Phillips and Brown, 1998). Two studies by Brown (1989) and Evans (1993) found that in around three-quarters of cases, the parents or guardians act as appropriate adults, with social workers stepping into the role in most of the remaining cases. Brown et al. (1992), comparing practice before and after the revised PACE Codes of Practice were brought in, found that parents attended in 60 per cent of cases after the revised Codes were introduced, 10 per cent fewer than before, and that there was a corresponding rise in cases attended by social workers. Phillips and Brown (1998) suggested a diminution in the demand for social workers services as appropriate adult. In this study, they found that appropriate adults were obtained in 97 per cent of cases involving juveniles. A parent or another family member usually attended in this capacity. Bucke and Brown (1997) found that nearly one in five detainees were juveniles (19 per cent), with the vast majority of these having an appropriate adult attend the police station while they were in custody. They also found that over half of appropriate adult attending police station

were parents or guardians of the juvenile detainee, and just under a quarter were social workers.

Dixon (1990) and Brown et al (1992) point out that parents are often not well-equipped to act as appropriate adults because they may know little about police procedures or what is acceptable in police interviews, may be emotionally upset at their child's quandary, or may take sides with or against the police. Their role is often not explained to them by the police. They tend to play little part in police interviews.

Social workers often lack training in the appropriate adult's role and may be oriented more towards welfare than justice issue. The quality of their response is related to the organisation of juvenile justice work in social service departments and the extent to which staff specialise in this area. Like parents, they generally remain passive during police interviews (Dixon, 1990; Kay and Quao, 1987; Evans and Rawstorne, 1994).

Appropriate adults for mentally disordered and handicapped

Bucke and Brown (1997) found that two per cent of detainees were initially treated as mentally disordered or handicapped. Appropriate adults attended in about two-third of these cases. They also found that social workers most frequently acted as appropriate adults. Philips and Brown (1998) found two-thirds of cases in which custody officers suspected that the detainee was mentally disordered or mentally handicapped. They also found in 11 out of 67 cases in which custody officers were concerned about possible mental disorder or mental handicap; the detainee did not see a doctor, a social worker or other professional, or any other appropriate adults.

Brown et al. (1992) and Robertson (1992) and Evans and Rawstorne (1994) have suggested that there be a trend towards the attendance of suitably qualified professionals as appropriate adults in mental health cases. The first of these studies found that

relatives acted as appropriate adults in less than a quarter of cases, and there was an increasing tendency for specialist and psychiatric social workers to be involved.

An issue of exacting concern is the duty of appropriate adults where suspects have admitted offences to them. Parker (1992) found that social workers may have exposed this information from a position of trust and passing it on to the police breaches this confidence. On the other hand, if the appropriate adult's role is to ensure that evidence obtained is consistent, there is some pressure to disclose admissions to the police.

Bean and Nemitz (1994) found that the role of appropriate adults raises a number of problems in mental health cases. Firstly, there is sometimes confusion as to whether social workers are acting in this role or making an assessment under the Mental Health Act. Secondly, custody officers may not always be right in assuming that professionals know what is expected of them as appropriate adults. Thirdly, there is a lack of clarity about the status of information confided in appropriate adults by detainees.

Conclusion

This chapter examined the Police and Criminal Evidence Act 1984 (PACE) in practice and reviews the research on the operation of PACE.

There must be considerable doubt about the balance in the investigation process between the public interest in bringing suspects to justice and the rights and liberties of suspects. PACE assumes that a desirable balance is objectively verifiable in some way. In fact, what is the satisfactory balance must be largely a matter of subjective judgement that will inevitably vary, particularly as the various parties with a stake in the criminal justice system will have different standpoints and will interpret the same data differently. There must be an assumption that the preservation of the rights and liberty of the suspect dictate that a certain percentage of guilty people are released without proceeding because the solution of crime does not justify unlimited detention or over-invasive

investigative methods. But there is no way of knowing what proportions of those released without proceeding are guilty.

Whilst adequate safeguards may exist in relation, for example, to the seizure procedure, this is of little comfort to the suspect stopped and searched on flimsy grounds. A more realistic approach, therefore, is to examine the equivalence of powers and safeguards in specific area: for example, in relation to stop and search, the treatment of juveniles and interviewing of suspects.

In order to obtain the required data to examine the Saudi Regulation in practice, both qualitative and quantitative methods were used. A questionnaire was employed as the main method of data collection. The researcher, however, felt that a questionnaire alone would not fulfil the purpose of this study, so a decision was made to supplement the questionnaire by (a) observation the treatment of the suspects by police at police station (b) cases records (reports and police files). The research design and methodology will be examined in the next chapter.

CHAPTER SEVEN: RESEARCH DESIGN AND METHODOLOGY.

- **Introduction**
- **Research questions**
- **Research methods**
- **Research instruments**
- **Validity of the survey instruments**
- **The piloting of the survey instruments**
- **Reliability of questionnaire**
- **Administration**
- **Data analysis techniques**
- **Limitation of the study**
- **Comparative analysis**

RESEARCH DESIGN AND THE METHODOLOGY

Introduction:

This chapter aims to give a description of the procedures that were followed in the research in order to collect the data related to the objectives of the study.

The choice of a design setting for any research project is always an important concern to the researcher, who seeks to determine the validity of a hypothesis, and how best to discover evidence to either accept or reject it (Miller, 1991: 21). The rationale for the selection of the research method depends on the research questions and the settings of the study area. The main purpose of this study is to evaluate the pre-trial procedures in Saudi Arabia, the police powers, and the suspect's rights.

Multi-methods surveys were used to carry out the investigation of this study: based a questionnaire survey, observation and documentary analysis. Survey research has been defined as "specification of procedures for gathering information about a large number of people by collecting information from a few of them" (Black and Champion, 1976: 85). The data gathered in survey through various data collection techniques enable the researcher to test certain assumptions and hypotheses and to describe several dimensions of group behaviour. Furthermore, surveys are very flexible as they permit the use of multi-methods of data collection (Black and Champion, 1976). For example, questionnaire and interview can be used in a survey method to collect information about the target population. Survey methods are more appropriate in cases where quantitative data are required and when the information sought is specific and familiar to respondents (Bulmer and Warwick, 1983).

In this study the researcher measured the pre-trial procedures and suspect's rights in Saudi Arabia by three different instruments: firstly, a survey of police patrol officers

was undertaken. Secondly, surveys of police investigation officers were conducted. Finally, observation of number of cases at police stations was undertaken based on examination of official statistics for police powers.

The research questions:

The main questions to be investigated, as part of the study objectives, were as following:

1. To what extent do the procedures governing stop and search provide adequate safeguards to suspects and how does this compare with the UK?
2. To what extent do the procedures governing arrest provide adequate safeguards to suspects and how does this compare with the UK?
3. To what extent do the procedures governing interviewing the suspects provide adequate safeguards to suspects and how does this compare with the UK?
4. To what extent do the procedures governing the identification and investigation provide safeguards to suspects and how does this compare with the UK?
5. To what extent are suspects treated at police station in accordance with the law and how does this compare with the UK?
6. To what extent is the legal right to legal advice taken or by suspects?
7. To what extent do suspects exercise their right to silence and how does this compare with the UK?
8. To what extent are vulnerable suspects provided with appropriate adults and how does this compare with the UK?

Research Methods

In order to obtain the required data, both qualitative and quantitative methods were used. A questionnaire was employed as the main method of data collection. The researcher, however, felt that a questionnaire alone would not fulfil the purpose of this study, so a decision was made to supplement the questionnaire by (a) observation the treatment of the suspects by police at police station (b) cases records (reports and police files). In this way the researcher can have more confidence concerning his conclusions than he would have if he employed a single method (Whyte and Alberti, 1983).

There has been a great deal of debate about the relative merits of the quantitative and qualitative approaches to social research (see, for example, May 1997; Anderson & Arsenault, 1998 and Neuman, 2000). The strengths of quantitative research are seen as lying in its highly structured nature, its reliability and the representative ness of the data it provides, whereas the strengths of qualitative research are seen as lying in its investigative nature, its in-depth focus and the detailed complexity of the data it provides (see, for example, Anderson & Arsenault, 1998). The debates about the relative merits of quantitative and qualitative research methods often revolve around survey-based research and ethnographic research (see, for example, Bailey, 1998 and Cohen, Manion & Morrison 2000). This is because the survey constitutes the most popular form of quantitative research and ethnographic research constitutes the most ambitious form of qualitative research based on participant observation (see, for example, Anderson & Arsenault, 1998).

While often seen as mutually exclusive ways of carrying out social research in the past, these two approaches are increasingly seen as complementing each other. Indeed, as Borg & Gall (1996) explained, both the quantitative and qualitative approaches help researchers make important discoveries, especially when they are used in combination

together in the same study, for example, a combination of questionnaires and semi-structured interviews.

Survey research is a method of collecting data by asking a set of pre-formulated questions in a pre-determined sequence through questionnaire or interview to a sample of individuals drawn to be representative of a defined population (Hutton, 1990).

Descriptive and analytic surveys are the most well known forms of quantitative and qualitative research used in the social sciences (Cohen, Manion & Morrison, 2000). Borg & Gall (1996) mentioned that a descriptive and analytic survey, combining quantitative and qualitative research, is employed when the purpose of the study is to obtain a basic and detailed general description and analysis of a social phenomenon, for example, people's opinions about an issue.

Descriptive surveys are designed to portray the characteristics of particular individuals, situations, groups and so on (in terms of behaviour, attitudes and dispositions to act) and to determine the frequency with which such behaviour or attitudes occur in the population being sampled, whereas analytical surveys are concerned with testing hypotheses about the relationships between some variables in order to understand and explain a particular social phenomenon (Bulmer, 1990). Descriptive and analytic research is often essential to provide a descriptive and analytic foundation to develop other more specific lines of investigation. This kind of research is considered to be important in social sciences, such as criminology. In the following sections, the three research methods adopted are discussed in more detail.

To benefit from the strength of each approach, the present research made use of a combination of quantitative and qualitative approaches in a complementary way, using the survey method. The quantitative approach was implemented through questionnaires and documentary data from police files. The qualitative approach was applied through personal interviews. The researcher selected the survey method because it was the most

suitable approach for achieving the aims of this study, which was concerned with surveying attitudes and practices, and because it was hoped to be able, to some extent, to generalise the results.

The research instruments

The research instruments, questionnaire, observation and case records, were designed as follows:

I-The Questionnaire

To achieve the general aims of this study, the researcher employed questionnaires as the main research method of data collection. The questionnaire is a very popular tool of operationalisation in which concepts are operationalised in the form of questions, which are then put to the people under study. Babbie defined operationalisation as “the process through which the researcher devises procedures and operations that will result in observations relevant to general concepts he is interested in studying” (Babbie, 1975: 105).

The researcher decided to use a questionnaire because a questionnaire is a scientific instrument for the collection and measurement of a particular kind of data, such as feelings, motivations, attitudes, accomplishments, opinions and experience of individuals, in a survey research. Most of the data required for the purpose of this study was in the form of opinions and experiences, which suggested that a questionnaire would be an appropriate instrument. Moreover, a questionnaire is one of the most widely used social research techniques (Borg & Gall, 1996).

There are several advantages in the use of the questionnaire as a research instrument. These advantages include (see, for example, Clift & Imrie, 1981; Rabdi & Shikh, 1985; Oppenheim, 1996; Borg & Gall, 1996; May, 1997; and Cohen, Manion & Morrison 2000):

- It provides sufficient time to help respondents think about the questions and answer accurately. The lack of personal contact allows the respondent to feel completely at ease when providing information, particularly if responses are to be anonymous.
- Using a questionnaire enables the researcher to gather data from a large number of respondents simultaneously in less time and at less cost than, say, personal interviews.
- The use of questionnaires is a central part of social research, as they provide a relatively inexpensive way of discovering the characteristics and beliefs of the population at large.
- Questionnaires can be delivered to very large samples at one time by post, e-mail, fax or can be administered directly (face to face).
- Data can be collected in a standardised form, which facilitates statistical analysis and aids comparability.

In contrast, there are a number of potential disadvantages attached to the use of the questionnaire. These disadvantages include (see, for example, Knott & Waites, 1995; Oppenheim, 1996; Borg & Gall, 1996 and Cohen, Manion & Morrison 2000):

- If the responses indicate that the wrong questions were asked, or that they were phrased badly, it may be difficult to clarify the information, particularly if the respondents were anonymous. Therefore, the researcher measured the validity of questionnaire, conducted a pilot study and measured the reliability of the questionnaire to make sure that the questionnaire questions were understandable and had a high degree of reliability.
- Postal questionnaires generally have a low response rate. Therefore, the researcher distributed some questionnaires and collected most of them by hand.

- Questionnaires cannot probe deeply into respondents' feelings, but this can be overcome by using other instruments, for example interviews. Therefore, the researcher used the interview method in conjunction with the questionnaire method.

There are several methods for carrying out a questionnaire, such as on-line questionnaire (by using e-mail or the Internet), postal questionnaire (sending and collecting questionnaire by mail) and personal questionnaire (delivering and collecting questionnaire by hand). In addition, it is possible to carry out a questionnaire by using facsimile (fax) machines. Each of these methods has advantages and disadvantages (see, for example, Blaxter, Hughes & Tight, 1998 and Zikmund, 2000). Therefore, to avoid the disadvantages of using other methods, the researcher chose to distribute the questionnaires himself.

A) Construction of the Questionnaire

The development of the questionnaires was of paramount importance. Care had to be taken to obtain the necessary information without unduly influencing the respondents, as well as to translate the research objectives into specific questions. This is vital in questionnaire construction, to ensure that answers to such questions will provide the data for hypothesis testing. According to Nachmias and Nachmias, "The question must also motivate the respondent to provide the information being sought" (Nachmias and Nachmias 1996: 250). During the questionnaire development, consideration was given to the content, structure, format, and sequence of the questions.

Constructing the questionnaire is a crucial stage in performing a questionnaire-based survey. It is necessary to determine the overall topic areas of investigation, draft the items, sequence the items, and design the questionnaire in proper layout.

The first step in constructing the questionnaires was a review of the related literature to identify clearly the general information needed and the objectives of applying the

instrument; i.e. what the instrument is supposed to find out. Verma & Mallick (1999) recommend that the first step in constructing the questionnaire is a review to identify clearly the information needed in order to achieve the study objectives, to provide a touchstone against which the first draft of the questionnaire can be tested. In constructing the questionnaire, the following principles were followed (see, for example, Anderson & Arsenault, 1998; Blaxter, Hughes & Tight, 1998 and Zikmund, 2000):

- Questions and statements should be related directly to the objectives of the study. In addition, they should be short, precise, clear and understandable.
- Statements should be responded by ticking one of a few choices, as much as possible. In addition, statements that may be interpreted in more than one way should be avoided.
- A statement should not contain more than one question or double negatives.
- Personal questions should be avoided as much as possible.
- Too many questions, especially open-ended questions should be avoided, because they would take a long time to answer and to analyse.

There is disagreement among researchers about which style of questions is preferable, closed or open-ended. Both types have advantages and disadvantages. The researcher therefore used both closed and open questions. Closed questions were used to give specific information about the topic of interest, and they gave a good opportunity to compare answers. This type of question was selected in accordance with the advice of Oppenheim who suggested these questions are: “easier and quicker to answer; they require no writing, and quantification is straightforward, this often means that more questions can be asked within a given length of time and that more can be accomplished with a given sum of money” Oppenheim (1996: 114). A final open question allowed the possibility of capturing

opinions and experiences which were not covered in the main body of the questionnaire.

B) Questionnaire with police patrol officers

Section A: aimed to collect basic information regarding the respondent's situation, such as age, rank, job, and whether the respondent had received any recent training in criminal procedures.

Section B: aimed to collect information in relation to use of police powers of stop/ search and arrest, including the number of persons stopped last week, the number of persons searched after stop last week, the number of persons arrested following stop and search, the reasons for stopping last person, whether the person was searched, and whether any evidence was found as a result of search. This section was divided into eleven items.

Section C: aimed to collect the following information about the last suspect wrested:

- Age.
- Sex.
- Nationality.
- Whether the suspect had an appropriate adult, if he or she was under age, or not.
- Whether the suspect had a Mehram, if the suspect was female, or not.
- Whether the suspect exercised his or her right to silence.
- Whether the police provided medical attention for the suspect if he or she needed it.
- Whether the suspect was cooperative or not.

C) Questionnaire with police investigative officers

These questionnaires aimed to collect information about the criminal procedures at police station and the investigation with the suspects.

Section A: aimed to collect basic information about respondents' situation, such as age, rank, job, and whether the respondent had received any recent training in criminal procedures.

Section B: aimed to collect information about interviewing suspects, such as the frequency of interviewing the suspect, whether the suspect received bail or custody, the kind of bail, and the reasons for bail.

Section C: aimed to collect information about the investigative officers' views about the criminal procedures implemented with suspects on the following issues:

- Police officers discourage suspects to take legal advice.
- The detention period is too short to conduct an investigation properly
- Is it possible for officers to start interviewing the suspects immediately when they arrive the police station?
- The disadvantages of the provision of legal advice for police investigation.
- To investigate crime more effectively the police need increased powers of stop and search.
- If the police had greater powers of arrest there would be less crime.
- The provision of an appropriate adult for juveniles merely impedes the investigation.
- The right of female suspects to have a Mehran present unnecessarily interferes with the police ability to investigate crime.
- The right to silence interferes with the police ability to investigate crime and should be abolished.
- It is sometimes legitimate for police officers to use coercion to gain a confession.
- Some police officers use trickery and deception to gain confession.
- Suspects have too many rights and the police have not enough power.

- The provision of legal advice to suspects interferes the police ability to investigate.
- When the suspects remain silent during police investigation it is obvious that they are guilty.
- Police officers often treat suspects tersely
- In general police officers try and be friendly towards suspects.
- Suspects deserve to be treated properly because they are innocent until proven guilty.

D) Questionnaire sample selection

The way in which researchers design a sample depends on their research objective. Some researchers select sample in order to provide the maximum theoretical understanding, while others are primarily concerned to obtain a representative sample so that they can make inferences about the whole population (Arber, 1993:86).

There are two main types of samples: non-probability and probability samples. Non-probability samples include those in which cases are selected for their availability. In this type, the probability of each case in a population being selected as part of the potential sample is not known and it is not clear how results can be generalised to a wider population, especially according to statistical inferences. The selection of cases in this type is arbitrary and relies on the personal judgement of the researcher. In contrast, in probability samples, the probability of each case in the population being selected as part of the potential sample is known and is usually equal for all cases and it is clear how results can be generalised to a wider population (see, for example, Saunders, Lewis & Thornhill, 2000 and Zikmund, 2000).

In order to select a scientific sample it is necessary first to (see, for example, Rose & Sullivan, 1996; Saunders & Thornhill, 2000 and Kotler, 2001):

- Identify a suitable sampling frame or list of all cases in the population to be sampled based on research questions or objectives:
- Decide on a suitable sample size, taking into consideration the population size. “Large samples give more reliable results than small samples. However samples less than 1 percent of a population can be reliable with a credible sampling procedure” (Kotler, 2001: 69).
- Select the most appropriate sampling method (to obtain a representative sample a probability sample of a population should be drawn) and select the required sample;
- Check that the sample is representative of the population.

Samples for this research were drawn from all police stations (10 police stations) in Riyadh city. Two samples were involved in this research study: 120 police patrol officers and 120 police investigation officers. The researcher decided to select the sample randomly from the police stations in Riyadh city.

II- The observation

The observation method was used because the police behaviour and police culture (the suspects’ treatment at police station) could not be ascertained except by using this method. It also helped the researcher to know whether the suspects obtain their rights in practice inside the police station. In this regard, Bell (1993) point out that observation is a technique that can reveal the characteristic of groups or individual which would have been impossible to discover by other means.

There are different forms of observation methods depending on the sort of information wanted, for example, simple and structured observation, participant and non-participant observation and directed indirect observation (Robson, 1993). He argued that observation can be used as supportive or supplementary technique to collect data that

may complement or set in perspective data obtained by other means. Also, he argued that the main effort in a particular study is devoted to a series of interviews: observation might then be used to validate or corroborate the message obtained in the interviews. It is not unusual, however, for observation to be the primary method in a practical study, especially though not exclusively when the main intention is descriptive. Or it could be used in a multi-method case study where other methods, such as documentary analysis, supplement the observational data.

The observation provided information on police practice in dealing with suspects at police station. Observation was conducted in the five police stations every day between the hours of 0900 and midnight for a period of four months. A minimum of 750 hours observation was therefore carried out to cover 100 cases. The fieldwork of observation period ran from the beginning of April until the end of July 2002. The observation conducted in five police stations in Riyadh city. Both quantitative and qualitative data were collected on appropriate adults and Meham, searches, legal advice, detention length, the taking of body samples, police interviews, bail and case outcomes, and reasons of arrest and demographic details of the detainee were also recorded.

Conducting observational work on the police raises questions about the effect it may have on the behaviour of those being studied (Phillips and Brown, 1997). Police officers may change their everyday routines, so that the observer gets a false impression of what is thought to be real practice. However, there number of reasons why an observer effect was unlikely to be significant. Firstly, for station officers (the main focus of observation) to change their routine over the prolonged period of observation would be troublesome and unduly time-consuming. Secondly, the research was not generally viewed as a threat by officers. While remaining objective, the observer usually enjoyed good relations with station officers: for example, allowing officers to see copies of the data collection form. As the observation proceeded, it became clear that the focus of the

research was not on the performance of individual officers but on the general implementation of the new provisions. Thirdly, the main findings could be checked against the custody record sample in order to identify any anomalies.

III-Documentary data

The third research instrument used was selective documentary data. Documents, both historical and contemporary, are a rich source of data for social research (Punch, 1998).

Documentary analysis was used to obtain information about the police powers and pre-trial procedures in Saudi Arabia, since some information could not be found other than by using primary and secondary sources. Cheetham et al. (1996) mention that existing documents and statistics are can provide a useful resource of data about the process and outcomes of social work.

According to Siegel and Castellan (1988), primary sources include inadvertent sources such as the records of legislative bodies, government departments and local authorities, working parties, personal files, bulletins, newspaper and so on, or what might be called 'available data'. These can be classified under five main broad themes: public documents and official records, including census data, private documents, mass media, physical, non-verbal materials and social science data archives (Hall and Hall, 1996: 213). They provide a means for triangulating data, of supplementing other methods and of trying to counteract the weaknesses of each method singly by multiple perspectives upon a particular problem (Bulmer, 1977: 113).

Validity of the Survey Instruments

A questionnaire is an instrument for measuring ideas and for testing hypotheses: therefore, the questions must not only reflect the survey's aims, but also must be understood by respondents in a clear and unambiguous way (May, 1997). Therefore,

before applying any test, it is necessary to ensure that it is a valid measurement tool. So, there is a need to check its validity.

The term validity is one that is frequently used in the world of research and measurement. "Validity tells us whether the question, item or score measures what it is supposed to measure" (Oppenheim, 1996: 144 -145). Neuman (2000) added that the validity of a survey is the degree of fit between a construct a researcher uses to describe, theorise, or analyse the social world and what actually occurs in the social world. It means truthfulness. It aims to make sure that survey items are clear and understandable, and the conceptual and operational definitions mesh with each other.

Chapelle and Jamieson (1991) explain validity by dividing it into two types, internal validity and external validity. Internal validity refers to the accurate attribution of observed results to the factors that were supposed to be responsible for these results. External validity denotes the applicability of research results to instructional and research contexts other than the one in which the research was carried out. Neuman (2000) added that both internal and external validity are primarily used in experimental research. He added, also, that internal validity is used to indicate whether there are possible errors or alternative explanations to account for the results, despite attempts to institute controls, while external validity is used to measure the ability to generalise findings from a specific sample to a wider population.

Although it is not possible to have absolute confidence about measurement of survey validity, some measures are more valid than others. There are many types of validity, such as face validity, content validity, criterion validity, concurrent validity, predictive validity, construct validity; convergent and discriminate validity (Al-Wafi, 1989 and Neuman (2000), and trustees' validity (Obidat, Adass and Abdulhagg, 1989). Each type of validity is tested in a different way. Each type of validity is tested in a different way. The easiest type to achieve and the most basic kind is face validity. This is a judgement

by the scientific community that the indicator really measures the intended construct (Neuman, 2000). The researcher selected face validity to measure the validity of the survey instruments because it is the most common and the most suitable measure for this study.

To measure the validity of the survey used in this study and confirm the clarity of the items and their relevance to their scales and sections, the following steps were undertaken:

Both questionnaires and observation list were scrutinised by specialists in Hull University and the research supervisor, Professor. Clive Norris. Copies of both questionnaire and observation list were given to colleagues in King Saud University. Copies of both questionnaire and observation list were also distributed to eight Ph.D. students in Hull University. A letter was given to these assessors, indicating the nature and the aim of the survey and telling them that they were not asked to respond to the items, but to judge whether or not the items met the necessary criteria.

All questionnaires and observation list were collected personally. Around half an hour was spent with each person, face to face, to discuss all their notes, comments and their opinions. A number of items of the both questionnaire and the observation list were changed and a few items were removed according to the assessors' recommendations. In addition, most items were rearranged in a new sequence.

The questionnaires were developed in English-speaking. In view of this fact, it was necessary to translate the survey instruments into Arabic. Both the questionnaires and observation list were translated by the researcher. After this, consultation was held with four Arabic-speaking PhD researchers. This group was asked to comment on the wording, style and presentation of the questionnaires and observation list, and their comments and suggestions were taken into account to produce an amended translation.

Based on the both questionnaires pilot study, a few changes were suggested. The lecturers who scrutinised the questionnaires concentrated particularly on the sentence structure of each section in the questionnaires, so that those sentences would be more meaningful and appropriate to the respondents.

All respondents found that most questions were clear and understandable. Regarding the questionnaire, however, it was suggested that individual items required some clarification. The assessors thought some items were inapplicable in their situations, some irrelevant to the measured scale and some were ambiguous. These comments resulted in the following changes:

1- The questionnaire with police patrol officers:

A. a new item was added: was the last person you arrested cooperative? Question

20.

B. the item 'what is your job question 4, because it was unclear, was classified to: patrol office, station officer, investigation officer, and others.

C. 'recent' word was added to question 5, to become: 'recent training.

2- The questionnaire with investigation officers:

A. the item 'what is your age?' question 2, because it was not accurate, was classified to: 19-24, 25-29, 30-39, 40-49, and 5 and more.

B. 'recent' word was added to question 5 and became: 'recent training

C. the item 'what is your job question 4, because it was unclear, was classified to: patrol office, station officer, investigation officer, and others.

The Piloting of the survey instruments

The importance of pilot testing has been emphasised by many writers such as Avy, Jacobs and Razavieh (1972), Lin (1976), Hayman (1968), Cohen and Manion (1985).

and although all the foregoing writers proclaim the importance of the pilot test, it might be valuable to indicate the reasons for this importance.

Borg and Gall (1983: 30-31) reported, "Every questionnaire must be tested and refined under real world conditions. Even after years of experience, no expert can write a perfect questionnaire". The pilot test is very important in a research investigation because it helps the researcher to see how the questionnaires were conducted at the time of the main study and how long it will take to complete them, and to locate any ambiguities. On this basis, researchers can remove any items that do not yield usable data, add items to fill any data gaps and reword unclear questions, in preparation for the main study.

I- Pilot Study for Questionnaire with the patrol officers

After the questionnaire was developed, a pilot study was conducted, to determine whether the instrument was reliable, and if any changes should be made in order to make it more effective in measuring what it was suppose to measure. Thus, both reliability and validity tests of the research instrument were implemented. The pilot study was conducted with 10 police patrol officers in Riyadh during their work on the streets.

The researcher preferred to pilot the study on the streets of the following reasons:

- 1- most police work for stop and search happens in with suspects in the streets.
- 2- to see the police behaviours with the citizens.
- 3- to see the suspects' behaviours with the police officers when they stopped or searched.

The researcher administered the questionnaires personally. The researcher arranged meetings with police patrol officers to see each individually. The researcher discussed with them the questionnaire questions and statements by one, to ensure that they were

understandable. The outcome of the pilot with the police patrol officers resulted in further changes to the questionnaire as following:

1. To questions: 6, 7, and 8 the words 'last week' were added.
2. To questions: 9, 12, 13, 14, 16 the words 'last person' were added.
3. The question 1 was deleted because the police officers would not give their names.

The time taken to complete the questionnaire is important. For example, questions that take longer to answer than others are quite likely to be too complicated and may need to be re-worded or broken down into separate parts. The average time taken to complete the questionnaires with each patrol officer was 40-50 minutes.

II- Pilot study for the questionnaire with police investigation officers

All data gathering instruments need to be piloted to ascertain how long it will take the recipients to complete them, to ensure that all questions and instructions are clear and to enable the researcher to delete any items, which do not yield usable data (Bell, 1997).

The researcher piloted the questionnaire on a sample of 10 police investigation officers. The sample was selected from the officers who investigate the crimes inside the police stations. The researcher conducted the questionnaires personally.

The researcher arranged meeting with police investigation officers to see each individually. The researcher discussed with them the questionnaire questions and statements by one, to ensure that they were understandable. The outcome of the pilot with the police patrol officers resulted in further changes to the questionnaire as following:

1. Question 6 was changed from 'what is the frequency of the interviews?' to 'how many times did you interview the suspect?' because it was unclear.
2. 'Last person' was added to question 7 to be more accurate.
3. 'Of arrest' was added to question 15 to be more understandable.

4. Question 24 'police officers often treat suspects tersely' was added because the researcher would like to search all the treatment for the suspects at police station.

Reliability of questionnaire

Litwin defines reliability as "a statistical measure of how reproducible the survey instrument's data are" Litwin (1995: 6). In other words, the researcher should expect the same results if he applied the same scale on different occasions or with a different set from an equivalent population.

Neuman (2000: 164) mentioned that "reliability means consistency". It means that the same results would be obtained when the same measure is repeated or recurs under identical or very similar conditions. Oppenheim (1996: 144) emphasised that "reliability refers to the purity and consistency of a measure, to repeatability, to the probability of obtaining the same result again if the measure were to be duplicated". Hence, the reliability of a measuring instrument is the degree of consistency with which it measures whatever it is measuring.

Accordingly, measurement of reliability is a relevant test for measuring the level of similarity in the answers of the sub-sample. There are several types of testing for reliability such as test re-test, alternative forms and internal consistency. The most suitable type for the current study was internal consistency. There are several methods of testing internal consistency, such as the split-half (subdivided test), the Kuder-Richardson method of rational equivalence, Guttman, Hoyt's Analysis of Variance Procedure and Cronbach's Coefficient Alpha. Each method is used with a specific type of data according to the aims of study. The researcher used the Cronbach's Coefficient Alpha because it was the most suitable method for the current study to estimate the internal consistency. It is a common method for a single form of the test and it is much easier to compute than other methods.

Regarding what constitutes an acceptable standard of reliability, Borg states that:

Correlations below 0.35 show only very slight relationship between variables and have limited meaning in exploratory relationship, whereas a correlation within the range 0.35 and 0.65 shows a strong enough relationship between variables and is statistically significant beyond the one percent level (Borg, 1981: 218 – 219).

Moreover, as Oppenheim explained,

Reliability is never perfect: it is always a matter of degree. It is, in the social and behavioural sciences, rare to find reliability much above 0.90. The square of a correlation coefficient expresses the percentage of shared true variance; thus, a reliability coefficient of 0.90 means that the two measures have 81 per cent in common—they overlap, or share common variance, by just over four-fifths. If the reliability of a scale or other measures drops below 0.80 this means that repeated administrations will cover less than 64 per cent of the same ground, and that the error component is more than one-third; such a measure will come in for serious criticism and might well have to be discarded or rebuilt (Oppenheim, 1996: 159-160).

The above points were taken into consideration, and any item with a correlation of less than 0.35 was omitted from the scales.

The data obtained from administering the questionnaire to police officers were used to determine whether the questionnaire has this type of reliability.

Administration of the survey instruments in the main study

After considering all the assessors' comments, making the changes necessary to ensure understandability, piloting the study, and making sure that the survey instruments were reliable, the Arabic versions of the questionnaire were administered to the sample group of the main study. The researcher travelled to Saudi Arabia with a letter from the University of Hull in February 2002. This introductory letter included information about the researcher and indicated the purpose of the study and the importance of co-operation for the success of the study.

In Saudi Arabia, another letter was provided by King Fahd Security College indicating the purpose of the study and the importance of co-operation for the success of the study. This letter explained that the researcher had been given permission to present

his questionnaire and collect the required data. All respondents were very helpful in providing the information needed.

Administration of the questionnaires

The researcher was strongly aware of the need to prepare adequately for the administration of the questionnaires. All levels of the organisation were involved in the preparatory steps. Lines of communication were opened between the police officers and the police administration. The official letter obtained from the King Fahd Security College to the director of the Riyadh Police, asking for his co-operation with the researcher and explaining the purpose of the project, was helpful in this respect.

Before conducting the survey, the researcher met the director of the police in Riyadh. At this meeting, the researcher explained the aims of the study and what kind of help was needed, and informed him of the starting date of the survey and the time expected to be taken up.

Data Analysis Techniques

Data and information were derived, as indicated earlier in this chapter, from three main resources: questionnaires, observation and documentary analysis. This information was analysed and represented quantitatively by using the software package of SPSS (Statistical Package for Social Sciences), as well as qualitatively.

Quantitative research methods

In fact, thinking about how the data could be analysed and presented had shaped the design of the instruments. The researcher consulted the research supervisor and some experts in the Graduate School at Hull University and the King Fahd Security College in Saudi Arabia. Robson (1993) point out that the importance of such actions, saying 'you should be thinking about how your data are to be analysed at the design of your

project. This is important not only to ensure that what you collect is analysable, but also to simplify as much as possible the actual process of analysis' (Robson, 1993:311). Therefore all data collection methods were piloted as mentioned earlier, and some questions were reordered and others were added based on the recommendations of the experts.

There is a link between analytical approaches and particular research strategy (Robson, 1993:365). In connection with a survey or experiment, standardised instruments are used survey, which entail the use of various statistical techniques for data analysis and presentation. The aim is mainly to explain the situation in terms of cause and effect relationship, and to give objectivity to the results gathered (Harding et al., 1991).

The computer's contribution in social sciences is obvious in several ways, as pointed out by Klecka et al. (1975) who stated that computers could be used in social sciences 'in generating formal models of social system, for simulating the behaviour of nation or individual political actors for organizing and retrieving large bodies of textual material such as abstract of journals, and for analysing the contents of written work' (Klecka et al., 1975:1).

SPSS statistical techniques of analysis were adopted in this research project, after considerable discussion with the research supervisor and experts in SPSS. These included Descriptive, Frequency, Percentage, Tabulation, Crosstabs and Chi square. These techniques were seen as the most suitable techniques for the types of data to be analysed.

Frequency gives distribution for all type of data (nominal, ordinal and interval), and the data can be presented in tables or various kinds of charts such as pi charts, bar charts and histograms (Kinnear and Gray, 1994).

Crosstabs generates contingency tables, which list cell frequencies for categorical data classified by at least two variables. The tables also show row or column

frequencies and percentages. Various statistics computed from contingency tables, such as Chi-square, the phi coefficient and the contingency coefficient etc. are available in the option box in the crosstabs (Kinner and Gary, 1994).

However, other advanced statistical techniques such as Factor analysis and Regression were not used because of the sort of data gathered and the sort of questions included in the questionnaires and observation. Also the researcher tried to simplify the analysis as much as possible to present clear data relevant to the aim and objectives of this evaluative study by using the recommended techniques.

Qualitative research methods

Using qualitative methods in conjunction with the quantitative analysis in social sciences research may sometimes be indispensable, particularly with a case study, when some aspects of phenomena under investigation need detailed accounts of different participants. Such data are often gathered from interview and observation techniques. Robson (1993) argued that qualitative methods may be very useful in supplementing and illustrating the quantitative data obtained from an experiment or survey. Also by deriving information from different sources by using multi methods, qualitative methods are a useful way of testing one source of information against other sources.

Therefore, some data in this research study were analysed and presented qualitatively, particularly data gathered from documents and records analysis or by using observation.

Limitations of the study

It is important to describe the limitations as well as achievements of this study, so that lessons can be learned by future research, especially in developing countries. There were some good aspects in conducting this research study, such as the positive response of the Riyadh Police Administration and the degree of cooperation received from police

officers. Because I am a serving police officer, I had good cooperation from both the police administration and individual officers a number of who had my former students. However, it is natural for any research project to face some obstacle which may limit the full achievement of its aim and objectives or prevent the researcher from getting all the information wanted. Some of these limitations might be predictable, while others are not. There were some limitations encountered by the researcher while he was conducting the field work, such as the following:

1. **Time restriction.** Such a large evaluative research study needs considerable time and resources in order to enable the researcher to achieve its ultimate objectives. In fact, the researcher was not given enough time to carry out the fieldwork, because the rules of Saudi Culture Office allow students just three months to conduct their field work, despite the researcher's request and the particular characteristic of the research. Therefore, the researcher resorted to working through his annual holiday for another two months. Overall, such an evaluative study is time consuming, especially evaluating police work, which needs well defined and good planning and enough time for implementation. Time is an essential element in evaluation, which has to be considered. If the fieldwork had been allowed more time, the results would have been even more useful.
2. **Lack of cooperation.** Especially from the patrol police officers in streets. The researcher exerted considerable efforts to try to patrol officers in the streets to take part in this research project, as their views were considered very important. Because patrol officers are action oriented and busy many, they were reluctant to take the time to fill in the questionnaire. This was partially overcome by my accompanying and filling in the questionnaire on their behalf. Some offenders, who were observed, were uncooperative because they thought that the investigation should be conducted secretly and they should not be observed.

3. **Lack of references and statistical data.** To the researcher's knowledge this study, on police powers and suspect's rights, is the first study in Saudi Arabia. So, there are hardly any references about police work or police behaviour. Moreover, there are few national statistics about police powers or police work. Overall, the researcher did everything possible, with help of managers and practitioners, to overcome these limitations, and eventually obtained most of the important information he wanted for the study.

The comparison between KSA and England and Wales

Why a comparison between Saudi Arabia and England and Wales?

In 1983 in Saudi Arabia the new law regulating police powers (Saudi Regulation, 1983) was introduced. This law was heavily influenced by the principles that informed the Police and Criminal Evidence Act to be introduced in England and Wales in 1984. In that, they limited the police powers as following:

A) Limit stop and search. Like the Saudi regulation, PACE empowers any constable acting on reasonable grounds for suspicion to stop, detain and search persons or vehicles or anything in or on a vehicle, for certain items which may be seized (s.1 (2)). A constable may not, however, search a person or vehicle under section 1 'unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles' (s.1 (3)). Any stolen or prohibited article found in the course of such a search may be seized (s.1 (6)). The section does not deal with anything else found in the course of such a search. Article 1 (1983) of Saudi regulation gave the right to police to stop any one if they find them acting suspiciously. Saudi regulation is almost the same as PACE in determining 'reasonable suspicion' for stop and search. The Article has identified circumstances that give the police the right to stop a person, that is, if they find a person in a doubtful situation. For example, if the police saw a person late at night lurking around a house or a shop, the police have got the right to stop that person and

question him about his identity and the reason why he is in that place at that time. If the police find a justification for that, then they will allow the person to go, otherwise they will take him to the nearest police station for further investigation.

B) Limit power for arrest. Again arrest is nearly as in PACE the Saudi regulation provides power for police to arrest any person if they suspected that person has committed a crime. Article 2 (1983) of the Act explains the procedures which the police have to conduct throughout arrest, for example, the authority of arrest, recording a report and the detainee details. However, PACE had made clear that where a person has been arrested for an offence and is at a police station in consequence of that arrest and it appears to a constable that the person is also liable to arrest for any other offence, the person must be arrested for that other offence (s31). The arrested person must then be informed of the new arrest and the grounds for it under the provision of s28. The time limits on detention under s41 apply from the time of the first arrest (s41(4)). The aim of this provision is to exclude the possibility that a person may be released on bail, having been charged with the offence for which first arrested, and then immediately rearrested for another offence, so turning the detention clock back to zero (s31).

C) Limit detention at police station. The Police and Criminal Evidence Act 1984 created a scheme involving a number of stages during a suspect's detention by the police at which the continuation of custody must be authorised. The authorisations are by police officers in the earlier stages and by magistrates in the later stages. The maximum period for which detention without charge can be authorised is 96 hours in the case of a serious arrestable offence and 24 hours in other cases, but in practice a suspect might be in police custody for a number of hours before the detention clock starts to run. The detention is supervised by a custody officer. Saudi regulations are approximately the same as the maximum of detention period is five days.

Both PACE and Saudi Regulation provided rights to the suspects:

Legal advice

Like PACE, the Saudi regulation provides that during the investigation, the accused shall have the right to seek the assistance of a representative or an attorney. The Investigator shall conduct an investigation in the ` commission of any major crimes as herein provided for. He may also investigate other crimes if the circumstances of or gravity of the case so require or may file a lawsuit to have the accused appear directly before the competent court (Article 64, 1983). However, PACE adds that the suspect has the right to legal advice at any time and free of charge (s58).

Appropriate adults

In the UK, under PACE the police must provide `appropriate adult` for juvenile and mentally disordered or mentally handicapped detainees (C3.9). The role of the appropriate adult is to provide support to a vulnerable person in custody which may involve:

- giving advice.
- ensuring police interviews are conducted properly.
- facilitating communication between officers and the detainee.

It almost the same as Saudi regulation, juvenile offenders must have an appropriate adult during investigation and trial process. However, unlike PACE Saudi law provides Mehram (relative or husband) for female suspects (Article 13, 1983).

Medical attention

In the UK, the Code of Practice requires a police surgeon to be called in all cases where a detainee appears to be physically ill or mentally disordered, is injured, fails to respond normally to questions or conversations, or otherwise appears to need medical attention (C 9.2). Similarly, Saudi Regulation provides that medical attention be given to a suspect, if he needs it whilst in custody.

However, from the England and Wales we know that the law in books is in reality mediated by the working practice of police officers. Numerous studies have shown that officers do not blindly enforce the law, they use the law to achieve their practice goals. Nor do they always follow the law: they may mind suspects' attempts to legal advice stop and search people without reasonable suspicion and so on.

Therefore, to understand the extent to which the formal rules governing police procedures in Saudi Arabia actually influence police practice is an empirical matter. Given the similarities of the law in books between the two countries, the relevant literature on England and Wales, as a guide our analysis of policing in Saudi Arabia will provide a sound basis for judging the extent to which the rules govern policing.

Secondly, the reason is of a practical nature. Knowledge of systems in different countries has been vital in security basic levels of cooperation. There is no doubt that crime has increasingly become a global issue. This is particularly true for crimes such as terrorism and cyber crimes. However an increasing number of other crimes also have a transnational component. This is because offenders commit their crimes in more than one country, or a cross national borders. International cooperation is increasingly necessary in order for offenders to be apprehended, tried and convicted. Because officials systems cooperate with increasing frequency, a certain level of understanding of laws, procedures and appreciation of their similarities and differences is important and beneficial.

Thirdly, a further benefit of comparison between Saudi Arabia and England and Wales is to learn from the experience of other. Debates in criminal justice are informed by, or even instigated by, developments abroad, and experiences gained elsewhere might serve to inform decision-making at home. It is good for Saudi Arabia criminal justice system to investigate how England and Wales system tackle some of their problems and lessons could be learn from them.

Finally, a question of 'Where do we stand?' in order to gain insight into states of affairs at home it might be helpful to examine matters abroad.

Criminal justice systems are undoubtedly less self-contained than they have been in the past. Laws in England and Wales nowadays are strongly influenced by international treaties and by European legislation and ruling. Such supernational arrangements add a global element to criminal justice systems. Comparative criminal justice as an enterprise increasingly involves the study of such transnational and international arrangements. A good knowledge of the bodies and process that make international law is therefore vital in order to understand how criminal justice is developing across the globe.

Conclusion

This chapter has explained the research methodology for the present study. It began by explaining the research objective and its importance. The research instruments and the study sample (sampling frame, sample size and sampling technique) were described. The first instrument used was a questionnaire with 120 police patrol officers and 120 police investigation officers in Riyadh city. Its development, construction, validation, and the procedures for the pilot study were described. From the pilot study, both questionnaires were found to be valid and have a high alpha reliability. The administration of the instrument for the main study was also described in the chapter. The second instrument used for the study was observation its validation, the procedures for the pilot study, and the procedure for conducting the observation for the main study were all described in the chapter. The third source of information used for the study was documentary data obtained from Riyadh Police records and police files. Finally, this chapter explained the data analysis tools used. The collected data are presented in the next chapter.

CHAPTER EIGHT: PRE-TRIAL PROCEDURES IN PRACTICE: A COMPARISON BETWEEN SAUDI ARABIA AND THE UK.

- Stop and search
- Arrest
- Appropriate adults
- Legal advice
- Interviewing the suspects
- Confessions
- The right of silence
- Identification procedures
- Bail or custody

PRETRIAL PROCEDURES IN PRACTICE: A COMPARISON BETWEEN SAUDI ARABIA AND THE UK.

This chapter examines the pre-trial procedures and suspects' rights in practice in Saudi Arabia. First, the police powers for stop and search are examined, and the people stopped and searched profiled. Secondly, the police power to arrest is considered, with reference to who is arrested and reasons for arrest. Thirdly, the interviewing of suspects and their treatment at police station are examined. Finally, some issues of suspects' rights for appropriate adult, female suspects' right for a Mehram, access to legal advice and the right to silence. It will provide a comparison with the PACE and suspect's rights in the UK by focusing on two studies by Phillips and Brown (1998) and Bucke and Brown (1997).

Introduction

As soon as the police have any reason to suspect the individual the citizen becomes a suspect. The police then have the task of collecting evidence of what they believe the suspect has done so that this can be proven to the satisfaction of the courts. To assist them in this task the law provides them with various powers and, in order to guard against the misuse of these powers, due process protections begin. Only if there is 'reasonable suspicion' can coercive powers be exercised to stop and search or to arrest a suspect. On arrest, the suspect is generally taken to a police station and detained. This requires further due process justification, because civil liberties are further eroded by detention and its associated procedures such as interrogation, search of suspect's home, and fingerprinting. If detention is authorised, further forms of due process protection come into play, such as the right to legal advice, a right to silence, and other procedural safeguards (McConville, Sanders and Lenge, 1991; Sanders and Young, 2000).

Stop and search

The Police and Criminal Evidence Act 1984 (PACE) laid down police powers to stop and search persons or vehicles for stolen or prohibited articles on reasonable suspicion, and an accompanying Code of Practice gave detailed guidance on the interpretation of these powers. Statistics published by the Home Office show that the number of recorded stops and searches has increased quite dramatically between 1984 and 2000 (Home Office, 2001).

Research and official statistics have pointed out that forces vary considerably in the extent to which they use these powers (Willis, 1983; FitzGerald, 1993; Wilkins and Addicott, 1997; FitzGerald and Sibbitt, 1997; Phillips and Brown, 1998). The London Metropolitan Police has been among the higher users of stop/search powers, which have played an important part in contributing to arrests and clear-ups in the capital (Willis, 1983; Smith and Gray, 1985; Sanders and Young, 2000). No official statistics for powers to stop and search exist in Saudi Arabia, because there is no record for the stop and search in most cases.

The pre-trial regulations in Saudi Arabia are approximately the same as those in PACE for providing powers to stop and search. The former provide powers to the police to stop anyone if they find them acting suspiciously (article 1, 1983).

In the present study, about ten suspects were stopped by each police officer in a week. About six out of ten of the suspects were searched after being stopped. About third (35 per cent) of all suspects were arrested as a result of stop and search. This is much higher than the 11 per cent of suspects who were arrested as a result of a stop and search that was found in Phillips and Brown's study (1998). A study by Young (1994) in North London was found that 18 per cent of stop/searches resulted in an arrest. Although the figure of stop and search is high in Saudi Arabia a large number of police officers (77%)

believed that the police need increased powers to stop and search to investigate crime more effectively.

Phillips and Brown (1998) found that in 60 per cent of cases officers felt that there was sufficient evidence. However, in 30 per cent of cases the evidence was not considered sufficient to charge at this point.

In the present study, of those who were searched, in only 38 per cent of cases was sufficient evidence found for arrest. Nearly half of all suspects were arrested as a result of stop-search were cooperative in giving information to the police.

Reason for stop and search

Phillips and Brown (1998) found that the purpose for stop and search was to look for stolen property or drugs in only half of all cases. A significant minority of stops were made for motoring offences or driving with excess alcohol and it would appear that these led on to searches when police suspicions were aroused about other possible offences. They argue, in general, that there were high arrest figures for burglary, violence against person, prostitution, shoplifting and public order offences as a result of stop and search.

Table 1. Reasons for the last stop and search made.

The reasons	Phillips and Brown (1998)	Present study
Stolen property	29%	20.0%
Drugs	20%	12.5%
Moving traffic offences	17%	26.7%
Offensive weapon	5%	5.0%
Excess Alcohol	13%	11.7%
Going Equipped	9%	11.7%
Others	7%	12.5%
Total	100	100.0

Table 1 shows the reasons for stop and search in the present study. Almost half of suspects (47 %) were stopped and search made for stolen property and moving traffic offences, which was almost the same in Phillips and Brown's study (1998). Only about

13 per cent of suspects were stopped and searched for drugs. This is less than the 20 per cent of suspects who were stopped and searched for drugs in Phillips and Brown's study (1998). A significant minority of suspects (5%) were stopped and searched for offensive weapon offences. However, one quarter of all suspects was stopped and searched for excess alcohol and going equipped. Nearly the same proportion (22%) of all suspects were stopped and searched for the same reasons in Phillips and Brown's study (1998).

It is clear that much police work in Saudi Arabia around stop and search fails to satisfy due process ideals. Sometimes this is because the regulation itself is constituted by enabling and legitimising rules, such as those which allow consensual stops (in all circumstances), and also certain non-consensual stops, in the absence of reasonable suspicion. The police need not subvert such laws to breach due process, they need only use them. Sometimes, however, the police breach due process rules which are in conflict with their working assumptions.

These findings show that criterion of 'reasonable suspicion' does not act as an effective constraint on police officers in deciding whether to make a stop and search. It is clear from the way that police officers talk about stop and search that the question of what their legal powers may be does not enter into their decision making except in the case of rare individuals. It is important to recognise that stop and search made without 'reasonable suspicion' can produce results, and this is one of the main reasons for making them.

Arrest

No one should be arrested unless it is clear that they may have committed a specific offence. Normally such a determination should be made by a magistrate who would then issue a warrant authorising the police to arrest. If the police were to be given wider powers to arrest suspects for questioning, it is unlikely that all cases of society would

suffer greater interference, since the outcry would be too great (Sanders and Young, 2000).

Actually, the police need broad powers of arrest. They need to be able to round up known offenders from time to time to see if they are responsible for crimes occurring in the locality. They also need the power to act on their instincts by stopping suspicious looking characters. It may be that no crime will be detected by these methods, but the very fact of arresting such persons may prevent a planned crime (McConville, Sanders, and Leng, 1991).

This section will examine the powers of arrest in Saudi Arabia and try to show: who is arrested (sex, age and nationality) and the reasons for arrest. The sample consisted of a total of 120 police officers who all made stops and searches and arrested suspects.

In the UK, a general power of arrest for offences is provided by s25 of the 1984 Act. A constable can exercise the power of arrest under s25 only if:

- a) the constable has reasonable grounds for suspecting that an offence has been, or is being, committed or attempted; and
- b) the constable has reasonable grounds to suspect a person of having committed or attempted, or of being in the course of committing or attempting to commit that offence; and
- c) it appears to the constable that service of a summons is impracticable or inappropriate; and
- d) the impracticability or inappropriateness is because one of the general arrest conditions is satisfied (s25 (1) and (2)).

In Saudi Arabia, the regulations providing powers to arrest are more or less the same as in PACE. Whenever there is suspicion that a person has committed a crime, he should be arrested and taken to the relevant authorities. Then, a report should be prepared to identify the arresting officer, the detainee details, and the time of arrest and

the reasons for the arrest (Article 2, 1983). No person shall be arrested or detained except on the basis of an order from the competent authority. Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest (Article 35, 1983).

In the UK, the number of arrests following stop/searches fell in 1999/00 by 11 per cent, from 121,300 in 1998/9 to 108,000, although this figure is as high as or higher than any previous year except 1998/9. This was the first reduction in arrests since PACE began, although the fall was not as great as for stop/searches (21 per cent). Again, as was the case for stop/searches, reductions in the number of arrests occurred for all reasons for arrest apart from firearms, which rose by seven per cent. However, the size of the reductions of stop/search did not mirror the overall reduction quite so closely, in that arrests for 'going equipped' fell by 23 per cent, but those for the other category decreased by only one per cent (Home Office, 2001). On the other hand, in Saudi Arabia the number of arrests following stop and searches have increased from 51,980 in 1991 to 90,100 in 2001 (Ministry of Interior, 2000). Although this figure is less than the UK it still high in Saudi, bearing a mind that the population is only about a third the size of the U.K's.

In the present study, the majority of police officers (75%) thought that if the police had greater powers of arrest there would be less crime.

Sex

Official statistics in England and Wales (Home Office, annually) have noted that offenders are mostly male. Philips and Brown (1998) found that 85 per cent of those stopped were men and 15 per cent women, the situation is the same in Saudi Arabia, the present study's findings were similar: 90 per cent of those stopped were men and 10 per cent women.

Age

Philips and Brown's UK study (1998) found that fifteen per cent of those arrested were juveniles. They found that more than half of their sample (53%) were under age 30 years.

Similarly, in the present Saudi study, seventeen per cent of those arrested were juveniles. However, about two thirds of them (69%), a large proportion than in the UK, were under 30 years old

Table 2. The age and nationality of last person arrested.

Age of last person arrested	Nationality of last person arrested		Total
	Saudi	Non-Saudi	
UNDER 16	18	2	20
16-20	27	3	30
21-30	28	10	38
31-40	12	8	20
41-50	5	2	7
51+	2	3	5
Total	92	28	120

Table 2 shows the percentage of the age of those arrested and their nationality.

Nationality

Studies by the Home Office (1989) and Walker et al. (1990) found that Afro-Caribbean's are more likely than white people to be arrested. Other research and official studies have shown that black people are more likely to be arrested than whites (Stevens and Willis, 1979; Smith and Gary, 1985; Home Office, 1989; FitzGerald and Sibbitt, 1997; Home Office, 1997b; Jefferson and Walker, 1992).

In the present study, Saudi people were more often stopped and searched and arrested more than other nationalities. About 25 per cent of those arrested were non-Saudis, a rate can be expected, giver proportion in the general population.

Reasons for arrest

Philips and Brown (1998) found that eighty-seven per cent were arrested on suspicion of committing offences, while most of the remainder were held on warrant. In their study, they found that there were ethnic differences in the reasons for arrest. There were above average percentage of white suspects among those arrested for vehicle theft, criminal damage, public order offences and prostitution, of black people among those arrested for robbery and of Asians among those arrested for thefts from vehicles and fraud and forgery.

In the present study, the majority of those arrested (83%) were for less serious or moderately serious offences while just 17 per cent were arrested for very serious offences. Females were far less likely to be arrested than males.

All non-Saudis were arrested for less serious or moderately offences while Saudis were arrested for very serious offences.

The police arrested no juveniles or people aged 41 or over for very serious offences while those aged between 16 and 20 years were far more likely to be arrested for very serious offences

The findings show that a gap has opened up between working rules of officers and the formal rules of procedure affecting evidence. In many cases, however, a lack of skills may be the main reason for breaking rules, and an improvement in policing skills would often be a shorter way to better police behaviour than punitive action in connection with rule-breaking. For example, the findings found that those police officers who are subject to training, which include element on human rights and the importance of citizen rights, are somewhat more likely to had due process values.

Appropriate adults

In the UK, under PACE the police must provide ‘appropriate adult’ for juvenile and mentally disordered or mentally handicapped detainees (C3.9). The role of the appropriate adult is to provide support to a vulnerable person in custody which may involve:

- giving advice.
- ensuring police interviews are conducted properly.
- facilitating communication between officers and the detainee.

It almost the same as Saudi regulation, juvenile offenders must have an appropriate adult during investigation and trial process (Article 13, 1983).

Juveniles

In the UK, Bucke and Brown (1997) found that nearly one in five detainees (19%) in custody were under 17 years of age. Ninety one per cent of juveniles had an appropriate adult in attendance for all or some of their time in custody. In Phillips and Brown’s study (1998) juveniles were fifteen per cent of the detainees.

The findings of the present study are nearly the same as the UK, as about fifteen per cent of the observed sample were juvenile. Eighty per cent of them had an appropriate adult in attendance for all or some of their time in custody. Compared with the UK studies, thus is a slightly lower percentage.

Table 3. Who was the appropriate adult?

The appropriate adult	Frequency	Percent	Valid Percent
Parents	7	7.0	58.3
Social worker	3	3.0	25.0
Relative	1	1.0	8.3
Other responsible adult	1	1.0	8.3
Total	12	12.0	100.0

Table 3 shows who acted as an appropriate adult for juvenile suspects. In the majority of cases this was a parent (58%). A social worker attended in just a quarter of cases (25%). For the other cases (17%) a relative or other responsible adult such as a family friend or neighbour acted as appropriate adults. In Bucke and Brown's study (1997), the results were similar. The parent or guardian attended 59 per cent of cases, a social worker attended in just under a quarter of the cases (23%). However, other relatives attended in a much smaller number of cases (8%).

In the present study, more than half of the appropriate adults attended the police station having been contacted by the police (55%). Twenty seven per cent arrived with the person entering custody, because the police arrested the juvenile at their home address, or collected their parents before taking the juvenile to the police station. For just five per cent of juveniles an appropriate adult was not found. Comparing with Bucke and Brown's study (1997) the appropriate adults have been contacted by the police to attend police station in just over three-quarters of cases (77%). The appropriate adults arrived at the police station with juveniles arrested in just fourteen per cent of cases. Almost two-thirds of police investigation officers (63%) in this study thought that the provision of an appropriate adult for juveniles merely impedes the investigation.

Time taken to obtain appropriate adults

Where an appropriate adult is needed, it is important that one is obtained quickly. In the UK, Dixon (1990) pointed out that delaying the juveniles stay in custody runs the risk that the suspect may say whatever he or she believes the police want to hear in order to secure release. However, Brown, Ellis and Larcombe (1992) have drawn attention to lengthy delays in obtaining an appropriate adult in some cases

In the present study, appropriate adults were obtained reasonably quickly in the majority of cases. More than one third (37%) of the appropriate adults attended the

police station within one hour of being contacted by the police, and a further 43 per cent within two hours. In 11 per cent of cases the time taken was between two and four hours, and in nine per cent it was over four hours.

Comparing with Phillips and Brown (1998) in their study in the UK, they found that about half of appropriate adults attended the police station within one hour of being contacted by the police and a further 30 per cent within two hours. In twenty one per cent of cases the time taken was more than two hours, the same as in Saudi Arabia.

Female suspects

In the Saudi Arabia, the police must provide a Mehram (husband or relative) for female suspect in all the stages of criminal process (article 16, 1983). However, PACE does not have any similar requirement. In the present study, about 12 per cent of suspects in the observation sample were females. The majority of them (92%) had a Mehram in attendance for all or some of their time in custody. Most of them were Saudis and aged between 16 and 40 years.

Table 4 who were the Mehram?

WHO WERE THE MEHRAM	FREQUENCY	PERCENT	VALID PERCENT
Husband	5	5.0	45.5
Relative	4	4.0	36.4
Other Mehram	2	2.0	18.2
Total	11	11.0	100.0

Table 4 shows who the Mehram was for the female suspect. About forty six per cent of cases this was a husband. Relatives attended in about a third (36%) of cases. While other Mehram attended to the police station in just 18 per cent of cases. Less than half of investigation officers (48%) thought that the right for female suspects to have a Mehram present unnecessarily interferes with the police ability to investigate crime.

Mentally disordered or mentally handicapped people

Where a mentally disordered or handicapped person is arrested and held in custody, the police are under a duty to inform the 'appropriate adult' of the arrest, the reason for it and the whereabouts of the person (Code Para 3.9).

In the Saudi regulation, as under PACE, the Saudi police have to call the 'appropriate adult' to attend the police station for such detainees who require assistance (Article 13, 1983).

In the UK, compared to juveniles, mentally disordered or mentally handicapped detainees made up a much smaller group of those in detention. Just two per cent of all those in the custody record sample were treated as being mentally disordered or mentally handicapped (Bucke and Brown, 1997). Other research has argued that the proportion that is actually mentally disordered might be higher and that detainees with mental health problems are not always identified by custody officers. These studies, using independent medical assessments and various definitions of medical problems, have estimated that those suffering from mental disorder or mental handicap make up between 10 per cent and 26 per cent of detainees (Gudjunsson et al.: 1993 and Robertson et al.; 1995).

In the present study, mentally disordered and mentally handicapped detainees were a small group of those in detention. Only three per cent of all those in the observation sample were treated as being mentally disordered or mentally handicapped. Appropriate adults attended the police station in about 80 per cent of cases involving mentally disordered detainees, nearly the same rate for juveniles. In all cases parents or social workers agree to attend the police station. In two-thirds of cases a doctor attended the station and recommended that an appropriate adult was not required or that the detainee was fit to be kept in custody and interviewed.

In half of cases, relatives attended the police station and parents acted as appropriate adults in half of the remaining cases. Comparing with Bucke and Brown's study (1997), they found that mentally disordered or mentally handicapped were just two per cent of those in custody. Appropriate adults attended the police station in two-thirds (66%). Also, they found that in the majority of cases, a doctor attended the police station and social workers were far more likely to act as appropriate adults in cases involving mentally disordered or mentally handicapped detainees than in those involving juveniles.

The role and function of appropriate adults

In the UK, the Codes of Practice do not require appropriate adults to be informed about their roles on arrival at the police station. Custody officers are required to outline the role of an appropriate adult to the detainee, stating that the person is there to assist and advise them while in custody and that they therefore may meet in private if they wish (C 3.12). When an interview is to be conducted the appropriate adult should be told that his or her role is to advise the suspect, to observe that the interview is conducted properly, and to facilitate communication with the person being questioned (C 11.16).

Studies have highlighted the difficulties faced by both social workers and family members when acting as appropriate adults (Palmer, 1996; Brown et al., 1992; Dixon et al. 1990; Thomas, 1988).

In Saudi, the regulation does not mention that the custody officers have to inform the appropriate adults of their roles. However, in present study, the social workers and the family members who were acting as appropriate adults did not seem to face any difficulties in interpreting their roles.

Medical attention

In the UK, the Code of Practice requires a police surgeon to be called in all cases where a detainee appears to be physically ill or mentally disordered, is injured, fails to respond normally to questions or conversations, or otherwise appears to need medical attention (C 9.2).

Bucke and Brown (1997) found that fourteen per cent of detainees in the custody records received medical attention. Also, they found that large number of those receiving medical attention had been arrested for acts of violence, public order offences and drunkenness.

In the present study, ten per cent of detainees in the observation sample received medical attention. They had been arrested for less serious or moderately serious offences, and no detainee had been arrested for very serious offences.

Table 5 What were the reasons given for medical attention?

Reasons for medical attention	Frequency	Percent	Valid Percent
Physical injuries	4	4.0	36.4
Drunkenness	3	3.0	27.3
Mental disorder	3	3.0	27.3
Other illness	1	1.0	9.1
Total	11	11.0	100.0

Table 5 shows that nearly two-thirds (54%) of reasons given for medical attention were drunkenness and physical injuries. Similarly in with Bucke and Brown's study (1997), they also found that the most common reasons given for medical attention were physical injuries and drunkenness.

Overall, when medical attention was required a police surgeon usually attended. He was most likely to make recommendations concerning whether the detainee was fit to remain in custody, or to be interviewed, or whether a prescribed medication should be allowed.

Legal advice

In the UK, the Codes of Practice state that, subject to exceptional circumstances, people in police detention must be told that they can at any time communicate with a legal adviser free of charge (C 6.1). Also, the Code of Practice states that, custody officers are required to ask those refusing legal advice their reasons for doing so (C 6.5). Legal advice is a key right for those held in police custody. There is strong evidence from research studies that the demand for legal advice at the police station has been increasing (Brown, 1989; Brown, Ellis and Larcombe, 1992; Phillips and Brown, 1998).

In the Saudi regulation, the accused shall have the right to seek the assistance of a representative or an attorney during the investigation. The Investigator shall conduct an investigation in the ` commission of any major crimes as herein provided for. He may also investigate other crimes if the circumstances or gravity of the case so require or may file a lawsuit to have the accused appear directly before the competent court (Article 64, 1983).

The accused, the victim, the claimant in respect of the private right of action, and their respective representatives or attorneys may attend all the investigation proceedings. The Investigator may, however, conduct the investigation in the absence of all or some of the above mentioned, whenever that is deemed necessary for determining the truth. Immediately after the necessity has ended, he shall allow them to review the investigation (Article 69, 1983).

Requesting legal advice

Pervious studies have shown that both the introduction of PACE in 1986 and the first revision of the Codes of Practice in 1991 were marked by rises in requests for legal advice. Pre-PACE studies gave estimates of detainees requesting legal advice, which

ranged from three to 20 per cent (Softley et al., 1980; Bottomley et al., 1989; Brown, 1991). The introduction of PACE saw this rise to around 25 per cent (Brown, 1989; Sanders et al., 1989; Morgan et al., 1991).

Brown, Ellis and Larcombe (1992) found that the basis for the decision to request legal advice is not always well thought through. Those who might benefit from legal advice often did not request it because they were anxious not to delay their time in custody or because they were told that they probably would not be charged.

Phillips and Brown (1998) found that 37 per cent of all detainees requested legal advice. The request rate was higher for suspects (38%) than for those detained for other reasons. They found that three quarters of suspects who requested legal advice did so on arrival at the police station. Bucke and Brown (1997) found that 40 per cent of suspects requested legal advice.

In the present study, more than half of suspects (54%) requested legal advice. Males were found to be much more likely than females to request legal advice. One reason for this was because the majority of female suspects were provided with Mehrams for which the request rate for advice is low. another reason is that males were more likely to be arrested for serious offences for which the demand for advice is high. By comparison legal advice was requested by 40 per cent of males and 28 per cent of females in Phillips and Brown's study (1998).

Juveniles were found to be less likely than adults to request legal advice. This would be because of the provision of appropriate adults for juveniles, who might advise them and also to juveniles being more likely than adults to be arrested for less serious offences for which suspects are less likely to seek legal advice. By comparison 33 per cent of juveniles and 39 per cent of adults requested legal advice in Phillips and Brown's study (1998).

The Saudi suspects were found to be more likely than non-Saudi suspects to request legal advice. This could be related to offence, since the Saudi suspects were more likely than non-Saudi suspects to be arrested for serious offences for which suspects are more likely to seek legal advice.

In the present study, fifty per cent of investigation officers thought that the police officers should not encourage suspects to take legal advice, because they thought that legal advice for suspects interferes with the police ability to investigate crime.

Refusing legal advice

In the UK, under the Codes of Practice, custody officers are required to ask about reasons for not requesting legal advice and record any response (C 6.5). However, Bucke and Brown (1997) found that a large number of custody officers simply did not do this. They found that less than half of those refusing legal advice were asked their reasons.

In the present study, forty seven per cent of suspects decided not to request legal advice compared with sixty per cent in Bucke and Brown's study (1997).

Table 6 What were the reasons given for not requesting legal advice?

Reasons for not requesting legal advice	Frequency	Percent	Valid Percent
Not worth it/ Not required/ not necessary	20	20.0	42.6
because I'm innocent	16	16.0	34.0
because I'm guilty	11	11.0	23.4
Total	47	47.0	100.0

Table 6 shows the reasons given for not requesting legal advice. The most common reason given was that suspects did not feel the situation merited a legal advisor. One reason might be that the case involved a less serious offence for which legal advice was not thought necessary: for example, criminal damage or motoring offences. However, a

large number of these suspects had been arrested for offences of moderate seriousness such as theft and shoplifting.

The next most common reasons for not requesting legal advice was that suspects thought they were innocent or thought the police have sufficient evidence against them.

Receiving legal advice

In the UK, Brown (1989) found that legal advisers were more likely to attend the police station where the suspect had been arrested for serious offences. Bucke and Brown (1997) found that thirty four per cent of suspects and 27 per cent of other detainees received legal advice while in custody. They argued that the strong attrition rate for other detainees is mainly due to those arrested on warrant initially requesting legal advice at the station but then agreeing for a consultation to take place at court the next day. Phillips and Brown (1998) found that 33 per cent of suspects and 25 per cent of other detainees received legal advice. They found that custody officers were successful in contacting a legal adviser on the suspect's behalf in 88 per cent of requests.

In the present study, although 54 per cent of all suspects requested legal advice only 44 per cent of all suspects actually received it while in custody. The most common reasons for legal advice not being received were because suspects: changed their minds about needing advice; were released before an advisor arrived; or agreed to see a solicitor later in court rather than at the police station.

How was the legal advice delivered?

Bucke and Brown (1997) found that over half of suspects received face-to-face advice at the police station, while just over a quarter received advice at the police station together with a telephone consultation. Also, they found that just under a fifth of suspects had telephone advice only. Phillips and Brown (1998) found that there is a rise in face-to-face consultation and a decline in advice solely given by telephone. They

suggest that the use of legal representatives by solicitors firms may now allow legal advice to be given at the police station in more cases.

Table 7 How was the legal advice delivered?

How was the legal advisor delivered	Frequency	Percent	Valid Percent
Face-to-face	8	8.0	18.2
By telephone and face-to-face	12	12.0	27.3
Just by telephone	20	20.0	45.5
Via clerk	4	4.0	9.1
Total	44	44.0	100.0

Table 7 shows that less than half (45%) of suspects received legal advice at the police station by telephone. Just 18 per cent of all suspects received legal advice face-to-face at police station. About a third of all suspects received advice at the police station together with a telephone consultation while just nine per cent of the suspects received the advice by via clerk. Most of the suspects who have the legal advice by telephone, had been arrested for a less serious offence. Where as, the majority of suspects, who have the legal advice face-to-face at police station had been arrested for moderately or very serious offences.

Table 8 What was the reason for not having face-to-face contact with a legal representative?

Reasons for not having face-to-face contact	Frequency	Percent	Valid Percent
Being released before an a advisor arrined	10	10.0	31.3
The legal advisor not available	7	7.0	21.9
Changing his or her mind about needing legal advisor	6	6.0	18.8
Agreeing to see a solicitor in court rather than at the stat	9	9.0	28.1
Total	32	32.0	100.0

Table 8 shows the reasons for not having face-to-face consultation. About 31 per cent of all suspects do not have face-to-face consultation because they were being released. In 28 per cent of cases the suspects preferred to see a solicitor in court rather than at the police station. One reason for failure to make face-to-face contact was that suspects changing their mind about needing a legal advisor (18 per cent of cases). Over one fifth of suspects (22%) do not have the consultation because the legal adviser was not available when they were in custody.

The status of the legal adviser

In this study it was found that 27 per cent of consultations at a police station were with an accredited representative (legal advisor), while 73 per cent were with a solicitor. This compares with (10%) were representatives and (84%) were solicitors in Bucke and Brown's study (1997).

Several studies have drawn attention to the practice of some solicitors firms using legal representative to provide advice at police stations. The estimates they have provided vary widely and range from nine per cent (Brown, Ellis and Larcombe, 1992) and 30 per cent (Sanders et al., 1989) to 76 per cent (McConville and Hodgson, 1993). This may be because, in some places, practices specializing in criminal work have a number of representatives on hand solely to provide advice at police stations.

Number and length of consultations

The observation research examined the number and the length of consultations between suspects and legal advisers at police station. About one third of all suspects have legal advice twice, while 46 per cent just once. Just 23 per cent of suspects have legal advice more than two times. Compared with 25 per cent in Bucke and Brown's study (1997).

Table 9 What was the total length of all consultants?

Total length of all consultants	Frequency	Percent	Valid Percent
10-30 minutes	26	26.0	59.1
31-60	12	12.0	27.3
61-90	6	6.0	13.6
Total	44	44.0	100.0

Table 9 shows the total length of all consultations. The majority of consultations (59%) lasted no more than 30 minutes. In just 14 per cent of cases was the length over one hour.

Both the number of consultations and their length was linked to the seriousness of the offences involved, with those offences considered moderately or very serious likely to lead to multiple and lengthier consultations

In the UK, there is a suggestion that legal consultation have increased in their duration. McConville and Hodgson (1993) found that 22 per cent of legal consultations lasted less than five minutes, while Bucke and Brown (1997) found only seven per cent to be short as this. 42 per cent of consultations in McConville and Hodgson's study lasted between ten and 30 minutes, with the figure increasing to 55 per cent in the Bucke and Brown's study.

Interviewing suspects

This section will examine three aspects of police interviews with suspects in custody: first, the frequency of interviewing and the extent to which legal advisers are present during such encounters; secondly, the extent to which suspects make confessions during police interviews; finally, the suspects' exercise their right to silence.

In Saudi Arabia, it is stated that the interrogation shall be conducted in a manner that does not affect the will of the accused in making his statements. The accused shall not

be asked to take an oath nor shall he be subjected to any coercive measures. He shall not be interrogated outside the location of the investigation bureau except in an emergency to be determined by the Investigator (Article 102, 1983)

In all cases, the Investigator may, as necessary, summon any person to be investigated, or issue a warrant for his arrest whenever investigation circumstances warrant it (Article 103, 1983).

In the present study, the majority of investigation officers (84%) thought that it was possible for them to start interviewing the suspects immediately when they arrive at the police station.

Frequency of interviews

The police interviewed eight out of ten of all detainees in the observation sample during their time in custody, compared with six out of ten found in Bucke and Brown's study (1997). Forty one per cent of all suspects were interviewed twice, with only 23 per cent interviewed only once. Thirty six per of all suspects were interviewed more than twice. The majority of those arrested for serious offences were interviewed more than once.

Bucke and Brown (1997) found that the vast majority of suspects (90%) were interviewed only once. This figure is higher than that found in present study.

In the UK, previous studies have suggested a decline in the extent of interviewing (Irving and McKenzie, 1989; Brown, 1989; Brown et al., 1992). Stricter access to prisoners under PACE and increasing police workloads are among some of the explanation given for the decline. Brown et al. (1992) suggested that the decline seen during the 1980s and early 1990s has now stabilized.

Legal advisers at interviews

Sanders et al. (1989) point out that the presence of a legal adviser during police interviewing is seen by some observers as providing an important form of support for suspects. They have suggested that suspects are more likely to exercise their right to silence when a legal adviser is present.

In the present study, only 25 per cent of all suspects interviewed received legal advice, and the legal advisers attended in just 17 per cent of all interviews. This small figure is due to few requests for legal advice, difficulty of the legal advisers' attendance and the small number of serious offences. If telephone consultation is added, the figure would be increased to 51 per cent. Half of the police officers in the questionnaire sample thought that police should not encourage suspects to have legal advice during interviewing because they thought it disadvantages the police.

Brown (1989) found that legal advisers attended all police interviews in only 12 per cent of cases. This percentage has increased to one-third in Bucke and Brown's study (1997). This large increase in attendance is only partly due to the rise in requests for legal advice, with a more useful way of looking at this issue being to consider the rate legal advisers attend interview in legal advice cases only. Sanders et al. (1989) found that legal advisers attended at least one interview in two-thirds of cases in which advice was provided, while in Bucke and Brown's study (1997) the corresponding figure was 75 per cent. When Sanders et al. excluded telephone consultations, legal advisers attended police interviews in 81 per cent of cases in which they consulted with their clients at the police station, while in the Bucke and Brown's study that figure was 91 per cent. They suggested that legal advisers are more likely to decide that their presence is required during interviews in order to steer their clients through police interviewing.

Confessions

In the UK, numerous studies have found that at least half of suspects in detention confess when questioned by officers (Sanders et al., 1989; McConville, 1993; Moston and Stephenson, 1993); in Bucke and Brown study confessions were made by 58 per cent of suspects by Bucke and Brown (1997). They argued that legal advice has commonly been seen as an important influence on whether confessions are made; with a number of studies showing the confession rate to be lower where suspects receive legal advice.

In this study, most suspects (79%) confessed to some or all of the charges during the interviews. Sixty eight per cent of all suspects in the sample made confession to the main charge during interviews, compared with 58 per cent in Bucke and Brown's study (1997). They also found that four per cent of suspects confessed to offences other than those for which they were arrested. Almost all those making such admissions had been arrested for offences involving burglary, shoplifting or thefts.

The present study found that the confession rate to be higher (70%) where suspects did not receive legal advice. The majority of suspects confessed to less and moderately serious offences. 21 per cent of all investigation officers thought that it was sometimes legitimate for police officers to use coercion to gain confessions. More than half of investigation officers (60%) thought that some police officers use trickery and deception to gain confession.

The due process and crime control debate about the police questioning usually revolves around the problem of false confession and wrongful convictions. In order to eliminate false confessions, in line with due process, we would have to so fundamentally change the nature of police questioning that there would be many fewer convictions of guilty people. Crime control adherents would wish to maintain the processes which produce false confessions as long as they produce even greater number

of reliable confessions and expeditious convictions. The freedom approach, however, would weigh up the loss of convictions of the guilty against the problems of false confessions and oppressive questioning and consider the cost effectiveness of additions or alternative to confession evidence.

The right of silence

In the UK a number of studies have looked at the frequency with which suspects exercise their rights to silence during police interviews. However, as Brown (1994) has noted in a review of research on this matter for the Royal Commission on Criminal Justice (RCCJ), differences between studies in working definitions of 'silence' and in the methodology have resulted in quite widely varying results. Brown (1994) suggests that around five per cent of suspects outside the Metropolitan Police and between seven and nine per cent in London refused to answer all police questions. A further five per cent of suspects in non-Metropolitan forces and around seven per cent in London were estimated to refuse some questions of substance about their involvement in the offence. Zander and Henderson (1993) estimated that between 11 per cent and 13 per cent of defendants had refused all police questions and that a further nine to 17 per cent had refused some. Brown (1994) in a review of search for the RCCJ suggests that ten per cent of suspects outside the Metropolitan Police exercise their right to silence, with the proportion rising to around 16 per cent in London. These estimates include both suspects who refuse to answer all questions and those who answer questions selectively. Brown (1997) suggests that an increase in the use of the right of silence may have occurred during the early 1990s. Phillips and Brown (1993) found that ten per cent of suspects refused to answer all questions and 12 per cent refused to answer some.

In the present study, only two per cent of all suspects in the sample exercised their right to silence, and in only one case, the suspect refused to answer all questions involved in a very serious offence.

The findings suggest that great majority of police officers treat the principle as 'working rules' which shapes their day-to-day policing behaviour and which they use to evaluate the behaviour of other officers. This means that the great majority of police officers habitually try to avoid using more force than is necessary.

Table 10 Suspects' use of the right of silence by study

Study	Refused all questions	Refused some questions	Answered all questions
Phillips and Brown (1998)	10%	13%	77%
Bucke and Brown (1997)	6%	10%	84%
Present study	1%	1%	98%

Table 1.10 shows figures from studies in the UK and the present study in Saudi Arabia. A comparison of the figures indicates notable differences in suspects using the right of silence. In Phillips and Brown's study (1993) ten per cent of suspects gave 'no comment' interviews by refusing all questions from officers; in Bucke and Brown's study (1997) this figure had fallen to six per cent; and had is much lower at one per cent, in the present study. Thirteen per cent of suspects selectively answered police questions in Phillips and Brown's study, while in Bucke and Brown's study this fell to ten per cent. However, in the present study in only one case, the suspect answered police questions selectively. Suspects' use of the right of silence was linked to seriousness of offence. The suspect who refused to answer all police questions, was arrested for a very serious offence, while the suspect who refused to answer some questions was arrested for moderately serious offence.

In the present study, more than half of the investigation officers thought that the right to silence interferes with the police ability to investigate crime and should be abolished. One third of police investigation officers believed that when the suspects remain silence during police investigation it is obvious that they are guilty.

Identification and investigation procedures

This section examines the taking of samples from detainees for forensic analysis, the searching of suspects and the use of photographs and identification parades.

The Saudi regulation gave the investigate officer the right to seek the assistance of a specialized expert with respect to any matter relating to the investigation (Article 76, 1983).

Forensic analysis and DNA profiling

In the UK, Bucke and Brown (1997) point out that since the late 1980s DNA profiling has helped the police to establish a suspect's guilt or innocence in certain criminal cases. They argue that it is possible because each individual's DNA profile is unique, thereby allowing a scientific test to compare with other sample. Following the success of this new technique, a national DNA database became operational and DNA profiles are now used to search across the database against other samples from undetected crimes. The database also allows samples from a crime scene to be searched against existing records on the database in case the perpetrator has already given a sample or samples from unsolved cases to be placed on the database for future reference.

In Saudi Arabia, DNA profiling appeared in early 1990s and it helps police to investigate serious crime and to establish a suspect's guilt or innocence in certain criminal offences (Alharthi, 1997).

Samples taken from suspects for forensic analysis are divided according to whether they are 'non-intimate' or 'intimate'

Non-intimate samples

Non-intimate samples were taken from nine per cent of the suspects in the observation sample in connection with very serious and moderately serious offences.

Table 11 Type of non-intimate samples taken.

THE SAMPLES	FREQUENCY	PERCENT
Body-mouth swab	4	44
Hair	2	22
Sample from finger nail	1	11
Body imprint	2	23
Total	9	100

Table 11 shows the types of non-intimate sample taken. Forty four per cent of the samples were swabs taken from the mouth or body. Twenty two per cent of cases, hair samples were taken from the suspects who had been arrested for moderately serious offences. Samples from fingernail and body imprint were comparatively rare.

In the UK, Bucke and Brown (1997) found that non-intimate samples were taken from seven per cent of suspects in connection with a wide range of offences, including theft, criminal damage, drugs and public disorder. Also, they found that the majority of suspects providing non-intimate samples gave their consent. Samples were mainly taken to provide a record for future investigations, and were most commonly taken using a mouth swab.

Intimate samples

Intimate samples were taken in only 11 per cent of all suspects in the observation sample. These suspects had been arrested for very serious or moderately serious offences. Nobody refused to provide such samples.

Table 12 shows the different types of intimate samples taken. In more than half of all cases in the observation study blood samples were taken, with just 23 per cent samples of pubic hair. Swabs from body orifices and urine samples were taken relatively rarely.

Table 12 Type of intimate samples taken

The samples	Frequency	Percent
Blood	6	55
Pubic hair	2	23
Swab from body orifice	2	10
Urine	1	12
Total	11	100

Bucke and Brown (1997) found that intimate samples were taken in less than one per cent of cases, usually in serious offences such as murder, rape and robbery. They found that blood was by far the most common form of intimate sample taken.

Intimate searches

In the UK, intimate searches may only be conducted if an officer of the rank of superintendent or above has reasonable grounds for believing the suspect is either concealing an article which could harm that person or others at the police station, or is concealing a class A drug with intent to supply or export (Code C, A).

In Saudi Arabia, an investigation officer may search the suspect, which may include his body, clothes, and belongings. If the suspect is a female, a female assigned by the investigation officer shall conduct the search (Saudi Regulation, Article 42, 1984).

In the present study, intimate searches were carried out on 29 per cent of suspects in the observation sample. These suspects had been arrested for very serious or moderately serious offences. This compares with less than one per cent in Bucke and Brown's study (1997).

Photographs and identification parade

In the UK, Bucke and Brown (1997) found that four out of ten suspects were photographed while in custody, with less than one per cent of these being photographed without their consent. In a small number of cases they had been bailed pending an identification parade. Also, they found that suspects and witnesses failing to appear, rather than any changes in a suspect's appearance, were said to be a greater factor in the failure of identification procedures.

In the present observation study, ten per cent of all suspects were bailed pending an identification parade. However, no people in the observation sample were photographed. In Saudi regulation, suspects have to be photographed after appearing in court and after being sentenced.

Bail or custody

This section gives details of detention and the length of time that suspects were held in custody prior to charge or release and of the time spent by arresting officers on cases up to this point. It also provides information about bail

Detention

In the UK, the Act makes the custody officer responsible for insuring that all persons in detention at the police station are treated in accordance with the Act and the Codes of Practice, and that all matters required to be recorded are recorded in custody records relating to such persons (s39(1)).

In Saudi Arabia, the police officer shall promptly interrogate the suspect who has been arrested. Suspects may be held in detention for a period of twenty-four hours. On expiry of that period, the custody officer may notify the chairman of the relevant department, to extend it to five days (Article 109, 1984).

In the present study, of those suspects charged in observation sample, 51 per cent were bailed conditionally, 21 per cent were bailed without conditions, and 28 per cent were detained. This compares with 63 per cent bailed conditionally and 20 per cent detained in Bucke and Brown's study (1997). Females were more likely to be bailed than men. The vast majority of all suspects interviewed thought the detention place suitable and comfortable when asked.

Length of detention

In the UK, PACE keeps detention without charge to necessary minimum. Custody officers are required to charge a suspect where there is sufficient evidence to do so; if there is not such evidence, they may only authorize detention where it is necessary to secure or preserve evidence of an offence for which the suspect is under arrest, or obtain evidence by questioning. An arrested person should not be held for more than 24 hours without being charged. Prior to this, an officer of at least inspector rank, who is not directly involved in the investigation, must review whether detention continues to be necessary. Studies suggest that the time that suspects spend in custody varies according to a range of factors, including the offence and whether the police are required to secure

the attendance of a legal adviser or an appropriate adult (Irving and McKenzie, 1989; Brown, 1989).

Table 13 How long was the suspect detained at the police station?

The time	Frequency	Percent
Under 12 hours	27	27.0
Over 12 hours but less than 24 hours	30	30.0
24 hours but less than 36 hours	17	17.0
36 hours but less than 48 hours	15	15.0
48 hours or more	11	11.0
Total	100	100.0

Table 13 shows the length of the detention at police station. More than half of suspects in the observation sample (57%) were held in detention for a period of 24 hours and less, with about one third held for less than 12 hours. 11 per cent were held more than 48 hours, these suspects were arrested for very serious and moderately serious offences.

The review of detention happened in about 40 per cent of all cases in the sample, conducted by the chairman of the department. Phillips and Brown (1998) found that, on average, suspects were held for six hours and 40 minutes prior to charge or release.

Reasons for refusing bail

Reasons for refusing bail are outlined in Table 14. This shows that the most common reason to refuse bail was that the suspect's name or address could not be ascertained (39%). The possibility of further offences being committed is used as grounds for detention in around a third of all cases in which bail was refused. In 14 per cent of cases, the suspicion that the accused would fail to appear at court was the reason for the detention after charge. One reason for refusing bail was for the accused's own protection. Men were more likely to be detained than women, in the observation sample.

Table 14 What were the reasons for refusing bail?

Reasons for refusing bail	Frequency	Percent
Prevent further offences	10	36
Name or address could not be ascertained	11	39
Risk of failure to appear at court	4	14
For accused's own protection	3	11
Total	28	100.0

In the UK, Bucke and Brown (1997) found that the most common reason for suspects being detained after charge was to prevent further offences (32%). However, the risks that the suspect may fail to appear or may interfere with police investigations were also cited as important grounds for refusing bail (30%). Phillips and Brown (1998) found that the risk of the suspect failing to appear at court was most often given as a reason for refusing bail (11%). Those arrested for offences against the person were most often refused bail on account of fears of them causing further physical injury.

Bail with conditions

In the present study, of those charged, 51 per cent were given bail with conditions. Phillips and Brown (1998) found that 22 per cent of those charged were detained for court. Similarly, Bucke and Brown (1997) found that 20 per cent of suspects being detained after charge. This finding confirms other research on police bail with conditions, which suggests that police officers appear cautious about taking on the extra responsibility of granting bail in cases where there is a possibility of breach or reoffending (Raine and Willson, 1996)

In this study, bail with conditions was most likely to be granted in moderately serious offences. None of those suspects charged with very serious offences who were released on this basis, compared with four out of ten suspects charged with serious offences were

released on conditional bail, with two out of ten for moderately serious offences in Bucke and Brown's study (1997).

Women were less likely to be given conditional bail compared to men (6 and 30%); however this was because they were more likely to be charged and unconditionally released. Conditional bail was given to 28 per cent of Saudis, compared to seven per cent of Non-Saudis. Juveniles were only slightly more likely to be given bail with conditions (4%) than adults (32%).

Reasons for conditional bail

Table 15 presents the reasons for attaching conditions to bail. In almost six of ten cases conditions were placed on bail because custody officers believed the accused might interfere the justice by contacting witnesses or the victims. In 27 per cent of cases conditions were placed on bail because officers believed the accused might offend again. The possibility of the person charged failing to appear at the end of the bail period was much less of a concern among officers. Comparing with six out of ten for prevent offending, over half of cases for prevent interference with justice in Bucke and Brown's study (1997).

Table 15 What are the reasons for conditional bail?

Reasons	Frequency	Percent
Prevent interference with justice	32	61
Prevent offending on bail	15	27
Prevent failure to appear at court	4	12
Total	51	100.0

Finally, we wish to explore in more details the attitudes that police officers hold towards police powers and suspects rights, and to see if there are differences with regards to rank and training.

Table 16: general support for crime control versus due process values indicating level of significant for junior vs. supervisory officers.

	AGREE	DISAGREE
Police officers treat suspects tersely	83.3% NS*	16.7%
Suspects have too many rights and police have not enough powers.	76.7% NS	23.3%
To investigate crime more effectively the police need increased powers to stop and search.	76.7% Sig**	23.3%
If the police have greater powers of arrest there would be less crime	75% NS	25%
The detention period is too short to conduct investigation	67.5% NS	32.5%
The provision appropriate adult for juveniles merely impedes the investigation	63% NS	36.7%
The right of silence interferes with the police ability to investigate crime and should be abolished.	63.3% NS	36.7%
Some police officers use trickery and deception to gain confession.	62.5% NS	37.5%
The provision legal advice disadvantage the police	53.3% NS	46.7%
Police should not encourage suspects to take legal advice	50% NS	50%
The right for female suspects to have Mehram present unnecessary interferes with the police ability to investigate crime.	48.3% NS	52.7%
Provision legal advice to suspects interfere the police ability to investigate crime.	41.7% NS	58.3%
When the suspects remain silence during police investigation it is obvious that they are guilty.	30.8% NS	69.2%
It is sometimes legitimate for police officers to use coercion to gain a confession.	21.7% NS	78.3%

* NS: not significant.

** Sig: stats really significant of the 0.05 level.

At the general level, it would appear as if officers are generally supportive of due process values. For instance over 90 per cent of officers regardless of rank believe that suspects deserve to be treated properly because they are innocent until guilty, and about 89% believe the police should try and be friendly toward suspects. However as Table 16

shows, regarding of rank of police officers, when asked about specific aspects of police powers and suspects rights. For example, over 75% believe that suspects have too many rights and police have not enough powers and to investigate crime more effectively the police need increased powers to stop and search and arrest, and the detention period too short to conduct investigation. Over 50 per cent of police officers believe that if the suspects have their rights to legal advice and appropriate adults it merely impedes the investigation.

It might be thought that those in positions of supervisory authority would have greater commitment to due process values. However as we can see from table 1 in out of 13 questions there was no statistical differences in the level of support for crime control values compared with due process values. The only difference is that supervisory officers were less likely to support the view that to investigate crime more effectively the police need increased powers to stop and search.

At the general level, it would appear as if officers are generally supportive of due process values. For instance over 90 per cent of officers regardless of receiving criminal procedures training believe that suspects deserve to be treated properly because they are innocent until guilty, and about 89% believe the police should try and be friendly toward suspects. However as Table 17 shows, regarding police officers who have received training, when asked about specific aspects of police powers and suspects rights officers are much more likely to be supportive of crime control values. For example, over 75% believe that suspects have too many rights and police have not enough powers and to investigate crime more effectively the police need increased powers to stop and search and arrest, and the detention period too short to conduct investigation. Over 50 per cent of police officers believe that if the suspects have their rights to legal advice and appropriate adults it merely impedes the investigation.

Table 17: general support for crime control versus due process values indicating level of significant for influence of training on outcome.

	AGREE	DISAGREE
Police officers treat suspects tersely	83.3% NS*	16.7%
Suspects have too many rights and police have not enough powers.	76.7% NS	23.3%
To investigate crime more effectively the police need increased powers to stop and search.	76.7% NS	23.3%
If the police have greater powers of arrest there would be less crime	75% NS	25%
The detention period is too short to conduct investigation	67.5% NS	32.5%
The provision appropriate adult for juveniles merely impedes the investigation	63% Sig**	36.7%
The right of silence interferes with the police ability to investigate crime and should be abolished.	63.3% NS	36.7%
Some police officers use trickery and deception to gain confession.	62.5% NS	37.5%
The provision legal advice disadvantage the police	53.3% NS	46.7%
Police should not encourage suspects to take legal advice	50% NS	50%
The right for female suspects to have Mehram present unnecessary interferes with the police ability to investigate crime.	48.3% Sig**	52.7%
Provision legal advice to suspects interfere the police ability to investigate crime.	41.7% NS	58.3%
When the suspects remain silence during police investigation it is obvious that they are guilty.	30.8% NS	69.2%
It is sometimes legitimate for police officers to use coercion to gain a confession.	21.7% NS	78.3%
Suspects deserve to be treated properly because they are innocent until guilty.	90.8% Sig**	9.2%

* NS: not significant.

** Sig: stats really significant of the 0.05 level.

It might be thought that those who received criminal procedures training would have greater commitment to due process values. However as we can see from Table 17 in 12 out of 15 questions there was no statistical differences in the level of support for crime control values compared with due process values. The only three areas where there was a difference concerned the provision of appropriate adult, a Mehram for female suspects, and whether suspects deserve to be treated properly because they are innocent until

proven guilty. In these three areas, those who had been trained were significantly more likely to hold due process values. This suggests that those who are subject to training, which include elements on human rights and the importance of citizen rights, are somewhat more likely to hold due process values.

Conclusion

This chapter has examined the pre-trial procedures and suspect's rights in practice in Saudi Arabia. First, the police powers for stop and search were analysed, including who is stopped and searched. Secondly, the police power to arrest, who is arrested and reasons for arrest were considered. Thirdly, the interviewing of suspects and their treatment at police station were examined. This chapter also examines the suspects' rights to an appropriate adult, female suspects' right to presence of a Mehram, access to legal advice and the right to silence. Throughout, comparison was made with the situation under PACE in the UK, as revealed in two studies by Phillips and Brown (1998) and Bucke and Brown (1997).

The findings show that departure from rules and procedure affecting evidence are far more common outright fabrication and have a far more significant effect on the quality of the evidence that goes before courts. At the time of arrest suspects are frequently neither cautioned nor told they are being arrested. Juveniles are often questioned without an appropriate adult being present. The process of arrest is frequently seen as a way of bringing pressure to bear on a suspect to provide evidence against himself or others; it is not common for officers to use bullying tactics in questioning and to use threats, especially the threat of being kept in custody for a time. These kinds of pressure go well beyond what is necessary or inevitable within the current framework of procedure. In many cases, there is no record of the informal interviews during which tough questions are asked, or merely a record to show that the interview took place. Statements are produced by a process of interaction between an officer and a suspect (or

other reason): they are generally not a record of what the suspect said in his own words. They may amount to highly selective summary of what was said. The researcher believe that it is common for officers to make bargains with suspects in which an offer not to press charges or to help the suspect to get bail is traded for evidence or information.

Police behaviour appears to be more strongly influenced by Saudi Regulation inside the police station than out. The reason for this difference is probably that insufficient account was taken of the strong informal working rules which determine how the police behave on the street. In practice, the public are aware of their rights and of police powers.

In practice, Saudi Regulations have not yet produced a system in balance, in the sense that police powers and safeguards for the suspect are generally well matched in key areas. There are variations between the official regulation (law in books) and actual police practice. A discussion follows in the next chapter

**CHAPTER NINE: CONCLUSIONS AND
RECOMMENDATIONS**

CONCLUSION

Conclusion

The law in theory and the law in action have been discussed in chapter one. Laws governing police investigation along with how the police are made accountable. These rules and guidelines, however, provide only a backcloth against which the police operate on a day-to-day level, which is inevitably affected by their own perception of their job and how they interpret the many rules and guidelines. This is important for a number of reasons. Should the police, for example, perceive their main role as one of crime control, then they may be tempted to neglect due process in the interests of making sure that those guilty of crime are brought to court and found guilty. They may, as we have seen, downgrade the service or preventive aspects of their role. Discussions of police policy must therefore recognise the significance of discretion in police work and the role of police culture and its influence on police work.

In general, the law appears to exert less moral force on the police than is often believed, for there is a gap between many legal rules and the working rules of the police. This means that much of the law is presentational in nature, providing a misleading appearance of a system subject to numerous inhibitory due process safeguards. In reality, law-breaking by the police and lesser failures of due process are tolerated within a system which generally fails to punish and deter the police or to compensate most victims of those practices.

In current research, variations have been found between the official Saudi regulations and actual police practice from the research findings as follows:

Stop and search

In the present study, about ten suspects were stopped by each police officer in a week. About six out of ten of the suspects were searched after being stopped. About one third (35%) of all suspects were arrested as a result of stop and search. A significant minority of suspects were stopped and searched for offensive weapon offences.

Although the figure of stop and search is high, a large number of police officers (77%) believed that the police need increased powers to stop and search in order to investigate crime more effectively. In addition, it is clear that much police work around stop and search does not satisfy due process ideals. Sometimes this is because the regulation itself is constituted by enabling and legitimising rules, such as those which allow consensual stops (in all circumstances), and also certain non-consensual stops, in the absence of reasonable suspicion. The police need not subvert such laws to breach due process, they need only use them. Sometimes, however, the police breach due process rules which are in conflict with their working assumptions.

These findings show that criterion of 'reasonable suspicion' does not act as an effective constraint on police officers in deciding whether to make a stop and search. It is clear from the way that police officers talk about stop and search that the question of what their legal powers may be does not enter into their decision making except in the case of rare individuals. It is important to recognise that stop and search made without 'reasonable suspicion' can produce results, and this is one of the main reasons for making them.

Arrest

In Saudi regulation, there is a due process requirement that no one should be arrested unless there is strong evidence that they committed a specific offence.

Normally such a determination should be made by a senior officer who would then issue a warrant authorising the police to arrest. In situations of necessity, the model would accept that the police may act without prior authority, but only on hard evidence which would be subject to subsequent judicial scrutiny. However, the findings show that about a third (35%) of all suspects were arrested as a result of stop and search. Even though, the figure for arrest is high, most police officers believed that the police need more powers for arrest to investigate crime more effectively. It is clear that many arrests do not satisfy due process ideals. In some cases, this is because the regulation itself is comprised of enabling and legitimising regulations, such as the regulation which allow police officers, for crime control, to arrest suspects in the absence of reasonable suspicion.

If the police were to be given wider powers to arrest suspects for questioning, it is unlikely that all classes of society would suffer greater interference, since the outcry would be too great. Moreover, police powers would be applied in a discriminatory fashion to precisely those elements in the population 'the poor, the ignorant, the illiterate, the unpopular' who are least able to draw attention to their plight and to whose sufferings the vast majority of the population are the least responsive.

In police practice, the majority of offenders (90%) who were arrested were males and only ten per cent were women. That is because men are more likely to be commit crimes rather than women. Seventeen per cent of those arrested were juveniles, but it appears they were even more concentrated in those aged under 30 years old on the relatively going with two thirds (69%). Thus because young people more likely to be in the streets, late night, rather than old people.

These findings show that large number of cases is dealt with police officers without excessive use of force, but that police behave violently in some cases. The rules that

govern police officers use of force vary to some extent according to the context. For most police officers, the principle of seeking to use the minimum amount of force is a working rule. Police officers are probably quite strongly influenced in their behaviour by their assessment of the chance of being disciplined. It is clear that when making arrests most police officers do operate within 'working rules' which broadly approximate to powers of arrest defined by law. Also, the research findings show that when making arrests most police officers do operate within working rules which broadly approximate to powers of arrest defined by law. In 100 cases incidents involving arrest that the research covered there were seven cases in which the powers of arrest were clearly exceeded.

The findings show that a gap has opened up between working rules of officers and the formal rules of procedure affecting evidence. In many cases, however, a lack of skills may be the main reason for breaking rules, and an improvement in policing skills would often be a shorter way to better police behaviour than punitive action in connection with rule-breaking. For example, the findings found that those police officers who are subject to training, which include elements on human rights and the importance of citizen rights, are somewhat more likely to have due process values.

Detention in the police station

Saudi regulation allows the police to detain for a considerable period of time in order to let them investigate even though for many people this detention is coercive in itself. Especially vulnerable people are in theory given special protection but that vulnerability is not always recognised by the police. The rights which apply to all suspects in detention have a limited protective effect. This is partly because of the way those rights work in practice, but also partly because of the regulations

themselves. These regulations allow solicitors and police to behave in ways that dissuade many suspects from exercising their rights; allow police detention to be so unpleasant that many suspects are prepared to do almost anything to get out as quickly as possible; and make it difficult for solicitors to give useful advice and assistance to suspects

The findings show that little than half of suspects (54%) requested legal advice. The most common reason for not doing so was that suspects did not feel the situation merited a legal advisor. One reason might be that the case involved a less serious offence for which legal advice was not thought necessary: for example, criminal damage or motoring offences. However, a large number of those suspects had been arrested for offences of moderate seriousness such as theft and shoplifting. The next most common reasons for not requesting legal advice was that the suspect thought he is innocent or he thought the police have sufficient evidence against him and therefore legal advice was thought that would not be useful.

Perhaps suspects in police custody should be told that they will see a solicitor, not asked if they want one. It is true that, in normal circumstances, people do not have things foisted on them against their will simply because someone else thinks it will be good for them.

The traditional way of protecting people's rights is by providing them with remedies when their rights are breached. The rights, which examined in this research, are hardly protected in this way at all. The ostensible reason for this is that station officers are supposed to safeguard the interests of suspects. Without police rule breaking, there would be no need to have station officers. But station officers are police officers. If suspects need protection from the police, then by what logic can station officers be expected to provide that protection? The researcher observed the failures of station

officers such as allowing cell visits by officers, failing to provide clear information about rights and adopting ploys to avoid suspects receiving legal advice.

These findings show that detention following arrest seems to be authorised as a matter of routine and that there is no fresh application of the necessity principle by the station officer at the police station.

Police questioning

The due process and crime control debate about police questioning usually revolves around the problem of false confessions and wrongful conviction. However, it is also lesser extent it is about abuse of powers, regardless of the outcome. As with stop-search, arrest and general police station detention, police questioning is punitive in itself. Despite that, the majority of investigation officers (84%) thought they could start interviewing the suspects immediately when they arriving the police station.

In this study, most of all suspect (79%) confessed to some or all of the charges during interviews in observation sample. About 68 per cent of all suspects in sample made confession to the main charge during interviews. The confession rate was higher where suspects did not receive legal advice. The majority of suspects confessed to less and moderately offences. 21 per cent of all investigation officers thinking that sometimes legitimate for police officers to use coercion to gain confession. More than half of investigation officers (60%) thinking that some police officers use trickery and deception to gain confession. It is clear that much police practice around questioning does not satisfy due process ideals.

The Saudi regulation sets time limits beyond which detention cannot extend, explicitly allowing detention pre-charge up to these limits. Not only do these

provisions allow the police to detain for questioning, but the regulation obliges them to detain if they wish to question, as do increasingly tighter definitions of interview.

Restricting the police to interviewing in the police station and nowhere else could only be regarded as a due process protection if the context of detention was governed by due process standards. The reality is that, it cannot be wrested from police control. Therefore, due process safeguards for suspects in the police station are much weaker than they appear, and manifestly fail to 'balance' the powers of the police. The research findings show that many police officers do not take formal rules to be a 'working rule' but rather treat it as an 'inhibitory rule'. they bear in mind the difficulty of getting a conviction if it is shown in court that evidence has been obtained by fear of prejudice or hope of advantage or by oppression, but they do not themselves believe that it is wrong to offer inducement or make threats in order to get someone to talk, and also they do not believe that their supervising officers seriously expect them to refrain from using threats and inducements.

The findings suggest that great majority of police officers treat the principle as 'working rules' which shapes their day-to-day policing behaviour and which they use to evaluate the behaviour of other officers. This means that the great majority of police officers habitually try to avoid using more force than is necessary.

The findings show that departure from rules and procedure affecting evidence are far more common outright fabrication and have a far more significant effect on the quality of the evidence that goes before courts. At the time of arrest suspects are frequently neither cautioned nor told they are being arrested. Juveniles are often questioned without an appropriate adult being present. The process of arrest is frequently seen as a way of bringing pressure to bear on a suspect to provide evidence against himself or others; it is not common for officers to use bullying tactics in

questioning and to use threats, especially the threat of being kept in custody for a time. These kinds of pressure go well beyond what is necessary or inevitable within the current framework of procedure. In many cases, there is no record of the informal interviews during which tough questions are asked, or merely a record to show that the interview took place. Statements are produced by a process of interaction between an officer and a suspect (or other person): they are generally not a record of what the suspect said in his own words. They may amount to highly selective summary of what was said. The researcher believes that it is common for officers to make bargains with suspects in which an offer not to press charges or to help the suspect to get bail is traded for evidence or information.

In general, there is a gap between the 'working rule' of officers and the formal rule of procedure affecting evidence. This means that the force has come to work within a framework of double standards, which ultimately threatens the self-confidence of police officers, the confidence that the public have in them, and the confidence of the courts in the evidence they provide. There will be no fundamental changes as long as many police officers believe that the job cannot be done effectively within the rules. What findings show most clearly is that rules on their own will not be effective, without a collective effort by the force to make them work. This means that those who would like to see a change in police behaviour must interest themselves in the management of the force, and not just in making more rules.

From the comparison between Saudi Arabia and England and Wales, it is clear that law in books in both countries provided powers for police investigation and provided certain safeguards for suspects. The two systems gave limitations for stop and search, arrest, detention. In addition, they provided rights for suspects like legal advice, appropriate adult for juveniles, and right to silence. In practice, there are similarities

that there is a gap between many legal rules and the working rules of the police. This means that much of laws in two countries are presentational in nature, providing a misleading appearance of the systems subject to numerous inhibitory due process safeguard. In reality, law breaking by the police and lesser failures of due process are tolerated within a system, which generally fails to punish and deter the police or to compensate most victims of those practices. However, there are differences between two countries, for example, in Saudi practice there were high rate of stop and search and arrest. There were differences rate for appropriate adults for juveniles and receiving legal advice. The reasons for the differences between the two countries that they have different political systems, for example England and Wales have a democracy system, however in Saudi there is Islamic law. The second reason that police behave in different culture. Other reason, that police in two countries work in different environments. Finally, there are differences in population behaviours and the organisation of police in the two countries.

Recommendations

The protection of suspects from unfair or unreasonable pressure is just as important to the criminal justice system as the thoroughness with which the police carry out their investigations. This protection is currently governed by the relevant provisions of the starting point.

Detention

As was found in this study, 43% of all suspects in the observation sample were held in detention for a period of 24 hours or over. This suggests that the regulation should be amended to specify that the station officer, should review any cases of detention in excess of 24 hours to insure that continued detention is warranted. To understand the nature of the problem however, the police should be required to publish statistics on the numbers of persons arrested and, of these, the numbers who are subsequently charged, and on the length of time for which those charged and not charged are detained.

The role of station officer

At present, the Station Officer is required review the evidence, supervise the completion of the custody record and authorise detention or charge. As well as perform all the other duties associated with managing a police station. Station commanders should be fully equipped by training for the management and supervision of both station officers and arresting and investigating officers to ensure that there is a separation of these roles. This task should be clearly noted on the station commanders' job descriptions.

This is very demanding and it should be considered whether a specialist role, such as the custody officer under PACE, is created to be responsible for all aspects of arrestees welfare. Further to insure that there is an independent record of the treatment

of suspects there should be a video recording (including sound-track) for all activities in the custody office and the passages and stairways leading from the custody office to the cell.

The provision of legal advice

As was found in this study, less than 44 per cent of all suspects received legal advice. This suggests that the rules governing right to legal advice should be amended that custody record form should be amended so that the waiver of the right to consult a solicitor privately is achieved by way of alternative boxes which must be ticked in addition to the space for signature. When a suspect waives his or her right to legal advice this should be recorded on tape at the custody desk if video recording introduced. In addition to reminding the suspect at the beginning of the tape-record interview of his or her right to free and independent legal advice, the interviewing officer should, if the suspect has declined such advice, ask him or her to give the reasons for waiving the right.

All suspects who decline face-to-face legal advice should be given the opportunity of speaking to a duty solicitor on the telephone. If they decline to do this, or speak to the solicitor but maintain their decision, this should be recorded on the custody record and repeated on tape at the beginning of any subsequent tape-record interview.

Solicitors should automatically see and if possible be given a copy of the custody record as it then stands on their arrival at the police station and, if possible, be given an updated copy when they leave. Unrepresented suspects should be given a copy on request. Solicitors should be able to hear the tapes of any interviews which may have taken place with their clients before the solicitor's arrival at the police station and should be also be given copy of the tape as soon as practicable after charge.

Police training should include formal instruction in the role that solicitors are properly expected to play in the criminal justice system.

Appropriate adults

There should be a comprehensive review of the role, functions, qualifications, training and availability of appropriate adults. The review should examine whether the categories of people who need an appropriate adult are appropriately described in the regulation Act, and whether the police need clearer guidelines about the criteria to be employed when considering the need for an appropriate adult.

Recommendations for Further Research

This study has explored on a range of issues regarding police powers and suspects rights. It is clear that it is not enough merely to examine the formal rules governing policing, but that we need to see how these rules are applied in practice. Further research in this area will therefore need to continue examine the actual operation of police powers in practice to document how successful the law regulates police behaviour.

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APPENDIXES

- 1. Questionnaire for Patrol Police Officers**
- 2. Questionnaire for Investigation Officers**
- 3. Observation Form**
- 4. Results of Questionnaire with Patrol Officers**
- 5. Results of Questionnaire with investigation Officers**
- 6. Results of Observation**

APPENDIX ONE:

Questionnaire to Patrol Officers

1. The name :

2. What is your age :

19 – 24: () 25 – 29: () 30 – 39: ()

40 – 49: () 50 and more: ()

3. The rank :

- Lieutenant: ()
- First lieutenant: ()
- Captain: ()
- Major: ()
- Higher than major: ()

4. What is your job?

- Police officer: ()
- Investigation officer: ()
- Patrol officer: ()
- Others: ()

5. Have you received any recent training in criminal procedures?

Yes: ()

No: ()

6. How many person have you stopped in last week?

Mean: ()

Median: ()

Mode: ()

7. How many suspects have you searched after stop?

Mean: ()

Median: ()

Mode: ()

8. How many suspects have you arrested after stop and search?

Mean: ()

Median: ()

Mode: ()

9. Why did you stop the last person?

- Very serious offences: ()
- Moderately serious offences: ()
- Less serious offences: ()

10. Did you search the person?

Yes: () No: ()

11. Was any evidence found as a result of the search?

Yes: () No: ()

12. What was the age of last person you arrested?

Under 16: () 16 – 20: () 21 – 30: ()
31 – 40: () 41 – 50: () 51 and more: ()

13. What was the sex of the last person you arrested?

Male: () Female: ()

14. What was the Nationality of last person you arrested

Saudi: () Non-Saudi: ()

15. If the last person you arrested was under age did he or she have appropriate adult?

Yes: () No: ()

16. If the last person you arrested was female did she have a Mehram?

Yes: () No: ()

17. Did the last suspect you arrested exercise his or her right to silence?

Yes: () No: ()

18. Did the last suspect you arrested need medical attention?

Yes: () No: ()

19. If yes did you provide that for him or her?

Yes: () No: ()

20. Was the last person you arrested was cooperative :

- Very cooperative: ()
- Cooperative: ()
- Not cooperative: ()
- Absolutely not cooperative: ()

APPENDIX TWO:

Questionnaire to Investigation Officers

1. The name :

2. What is your age :

19 – 24: () 25 – 29: () 30–39: ()

40 – 49: () 50 and more: ()

3. The rank :

- Lieutenant: ()
- First lieutenant: ()
- Captain: ()
- Mejor: ()

4. What is your job?

- Police officer: ()
- Investigation officer: ()
- Patrol officer: ()
- Others: ()

5. Have you received any recent training in criminal procedures?

Yes: ()

No: ()

6. How many times did you interview the suspect?

Mean: ()

Median: ()

Mode: ()

7. Did the last suspect you interviewed receive bail?

Yes: ()

No: ()

8. If yes what kind of bail?

Conditional: ()

Unconditional: ()

9. What were the reasons for bail?

The offence is less serious: ()

The suspect's address is clear: ()

10. police officers should not encourage suspects to take legal advice :

() () () ()
Strongly agree Agree Disagree Strongly Disagree

11. The detention period is too short to conduct an investigation properly :

() () () ()
Strongly agree Agree Disagree Strongly Disagree

12. It is possible for officers to start interviewing the suspects immediately when they arrive the police station.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

13. The provision of legal advice disadvantages the police :

() () () ()
Strongly agree Agree Disagree Strongly Disagree

14. To investigate crime more effectively the police need increased powers of stop and search.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

15. If the police had greater powers of arrest there would be less crime :

() () () ()
Strongly agree Agree Disagree Strongly Disagree

16. The provision of appropriate adult for juveniles merely impedes the investigation.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

17. The right of female suspects to have a Mehran present unnecessarily interferes with the police ability to investigate crime.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

18. The right to silence interferes with the police ability to investigate crime and should be abolished.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

19. It is sometimes legitimate for police officers to use coercion to gain a confession.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

20. Some police officers use trickery and deception to gain confession :

() () () ()
Strongly agree Agree Disagree Strongly Disagree

21. Suspects have too many rights and the police have not enough power.

() () () ()
Strongly agree Agree Disagree Strongly Disagree

22. The provision of legal advice to suspects interferes the police ability to investigate.

() () () ()
Strongly agree agree Disagree strongly Disagree

23. When the suspects remain silent during police investigation it is obvious that they are guilty.

() () () ()

Strongly agree Agree Disagree Strongly Disagree

24. Police officers often treat suspects tersely.

() () () ()

Strongly agree Agree Disagree Strongly Disagree

25. In general police officers try and be friendly towards suspects.

() () () ()

Strongly agree Agree Disagree Strongly Disagree

26. Suspects deserve to be treated properly because they are innocent until quality.

() () () ()

Strongly agree Agree Disagree Strongly Disagree

APPENDIX THREE:

Observation Form

1. The suspect's sex:

Male: ()

Female: ()

2. Nationality:

Saudi: ()

Non-Saudi: ().

3. The suspect's age:

Under 16: () 16-24: () 25-39: ()

40-49: () 50-59: ().

1. Time of arrival at police station:

• 0730 am-1200non: ()

• 1201-1800: ()

• 1800-2400: ()

2. Does the suspect know the accusation against him or her?

Yes: ()

No: ()

DK: ()

3. What was the accusation?

• Very serious offences: ()

• Moderately serious offences: ()

• Less serious offences: ()

4. Did the suspect request legal advice?

Yes: ()

No: ()

DK: ()

9. Did the suspect receive legal advice?

Yes: ()

No: ()

DK: ()

10. Did the suspect refuse the legal advice?

Yes: ()

No: ()

DK: ()

11. What were the reasons given for not requesting legal?

A. Not worth it/ Not required/ Not necessary: ()

B. Because I'm innocent: ()

C. Because I'm guilty: ()

D. Maybe later: ()

12. Did the suspect contact face to face with his or her legal advisor?

Yes: ()

No: ()

13. What the reasons for not face to face contact?

A. Being released before an advisor arrived/ The legal advisor not Available/ Changing his or her mind about needing legal Advice: ()

B. Agreeing to see a solicitor in court rather than at the station:
()

14. If the contact was not face to face it was:

• By telephone: ()

• At police station: ()

• By telephone and at police station: ()

15. The number of consultations with legal advisor.

• Once: ()

• Twice: ()

• Three times: ()

• Four times: ()

16. The total length of all consultation:

• 10-30 minutes: ()

• 31-60 minutes: ()

• 61-90 minutes: ()

17. Did the police provide an appropriate adult for the juveniles?

Yes: ()

No: ()

18. What kind of appropriate adult?

• Parents: ()

• Social worker: ()

• Relative: ()

19. Did the police provide a Mehram for female suspects?

Yes: ()

No: ()

20. What kind of Mehram?

• Husband: ()

• Relative: ()

21. The reasons given for not providing a Mehram:

• Start interviewing before the Mehram arrive: ()

• The Mehram was not available at moment: ()

22. Did the police provide a medical attention for mentally disorder or mentally handicapped?

Yes: ()

No: ()

23. Did the suspect have medical attention?

Yes: ()

No: ()

24. What the reasons given for medical attention?

• Physical injuries: ()

• Drunkenness: ()

• Mental disorder: ()

• Other illness: ()

25. How long the detention at police station (custody)?

• Under 12 hours: ()

• Over 12 hours but less than 24 hours: ()

• 24 hours but less than 36 hours: ()

• 36 hours but less than 48 hours: ()

• 48 or more: ()

26. Is the detention place suitable and comfortable?

Yes: ()

No: ()

27. What is the frequency of police interviews the suspect?

• Once: ()

• Twice: ()

• Three times: ()

• Four times: ()

28. Did the suspect have legal advice during the interview?

Yes: ()

No: ()

DK: ()

29. Was a legal advice present for the whole interview?

Yes: ()

No ()

DK: ()

30. Did the suspect admit to some or all of the charges during interview?

Yes: ()

No: ()

DK: ()

31. If yes did the suspect admit to the main charge at any time during the interview?

Yes: ()

No: ()

32. Did the suspects practice their right to silence?

Yes: ()

No: ()

DK: ()

33. If yes did the suspect refuse to answer all questions?

Yes: ()

No: ()

34. Did the police take non- intimate samples?

Yes: ()

No: ()

35. Did the police take intimate samples?

Yes: ()

No: ()

36. If yes what type of intimate samples?

Blood: ()

Hair: ()

37. Did the police make an intimate search against the suspect?

Yes: ()

No: ()

38. Did the suspect receive bail or custody?

Custody: ()

Bail: ()

39. How long the custody?

• Less than 24 hours: ()

- 24-48 hours: ()
- 48 hours and more: ()

40. What the reasons for refusing bail?

- Prevent further offences: ()
- Name or address could not be ascertained: ()
- Risk of failure to appear at court: ()

41. What is the kind of bail?

- Conditional: ()
- Unconditional: ()

42. What the reasons for unconditional bail?

- The offence is less serious: ()
- His or her address is clear: ()

42. What the reasons for conditional bail?

- Prevent offending on bail: ()
- Prevent failure to appear at court: ()

APPENDIX FOUR:

Results of Questionnaire with Patrol Officers

Table 1.1 Age of officers in sample.

Age of officers	Frequency	Percent
19-24	19	15.8
25-29	30	25.0
30-39	44	36.7
40-49	16	13.3
50+	11	9.2
Total	120	100.0

Table 1.2 The rank of officers in sample.

The rank of officers	Frequency	Percent
Lieutenant	67	55.8
First Lieutenant	24	20.0
Captain	9	7.5
Major	15	12.5
Higher than Major	5	4.2
Total	120	100.0

Table 1.3 Current roles of the officers.

CURRENT ROLES OF THE OFFICERS	FREQUENCY	PERCENT
Patrol officers	58	48.3
Station officers	31	25.8
Investigation officers	25	20.8
Other officers	6	5.0
Total	120	100.0

Table 1.4 Have the respondents received any training?

HAVE THE RESPONDENTS RECEIVED ANY TRAINING	FREQUENCY	PERCENT
No	64	53.3
Yes	56	46.7
Total	120	100.0

	Total number of persons stopped.	Total number of persons searched after stopped.	Total number of persons arrested as a result of stop and search.
Mean	10.5000	6.1667	3.5000
Median	10.0000	5.0000	3.0000
Mode	12.00	5.00	2.00
Sum	1260.00	740.00	420.00

Table 1.5 Total number of persons stopped.

	Frequency	Percent
3	4	3.3
4	6	5.0
5	10	8.3
6	8	6.7
7	8	6.7
8	13	10.8
9	10	8.3
10	6	5.0
11	4	3.3
12	15	12.5
13	6	5.0
14	4	3.3
15	11	9.2
16	1	.8
17	2	1.7
18	1	.8
19	1	.8
20	8	6.7
21	1	.8
25	1	.8
Total	120	100.0

Table 1.6 Total number of persons searched after stopped.

	Frequency	Percent
2	12	10.0
3	17	14.2
4	13	10.8
5	19	15.8
6	12	10.0
7	11	9.2
8	12	10.0
9	6	5.0
10	5	4.2
12	7	5.8
13	3	2.5
15	2	1.7
16	1	.8
Total	120	100.0

Table 1.8 Total number of persons arrested as a result of stop and search.

Number of persons	Frequency	Percent
1	23	19.2
2	29	24.2
3	18	15.0
4	17	14.2
5	14	11.7
6	7	5.8
7	4	3.3
8	3	2.5
9	2	1.7
10	2	1.7
15	1	.8
Total	120	100.0

Table 1.9 Reasons for the last stop and search made.

The reasons for the last stop and search made	Frequency	Percent
Stolen property	24	20.0
Drugs	15	12.5
Moving traffic offences	32	26.7
Offensive weapon	6	5.0
Excess Alcohol	14	11.7
Going Equipped	14	11.7
Others	15	12.5
Total	120	100.0

Table 1.10 Was the person stopped, arrested?

WAS THE PERSON STOPPED, ARRESTED?	FREQUENCY	PERCENT
No	12	10.0
Yes	108	90.0
Total	120	100.0

Table 1.11 For the last person stopped and searched, was any evidence found?

There is any evidence found?	Frequency	Percent
No	75	62.5
Yes	45	37.5
Total	120	100.0

Table 1.12 What was the age of last person arrested.

Age of the last person arrested	Frequency	Percent
UNDER 16	20	16.7
16-20	30	25.0
21-30	38	31.7
31-40	20	16.7
41-50	7	5.8
51+	5	4.2
Total	120	100.0

Table 1.13 What was the sex of last person arrested?

The sex of last person arrested	Frequency	Percent
Male	108	90.0
Female	12	10.0
Total	120	100.0

Table 1.14 What was the nationality of last person arrested?

The nationality of the last person arrested	Frequency	Percent
Saudi	92	76.7
Non-Saudi	28	23.3
Total	120	100.0

Table 1.15 Did the last juvenile who were arrested have an appropriate adult?

Did the last juvenile have an appropriate adult?	Frequency	Percent	Valid Percent
No	4	3.3	20.0
Yes	16	13.3	80.0
Total	20	16.7	100.0

Table 1.16 Did the last female arrested have a Mehram?

Did the last female have Mehram?	Frequency	Percent	Valid Percent
No	2	1.7	16.7
Yes	10	8.3	83.3
Total	12	10.0	100.0

Table 1.17 Did the last person arrested exercise his/her right to silence?

Did the last person arrested exercise his right to silence?	Frequency	Percent	Valid Percent
No	116	96.7	96.7
Yes	4	3.3	3.3
Total	120	100.0	100.0

Table 1.18 Did the last person arrested need medical attention?

Did the last person arrested need medical attention?	Frequency	Percent	Valid Percent
No	107	89.2	89.2
Yes	13	10.8	10.8
Total	120	100.0	100.0

Table 1.19 Did the police provide medical attention for whom need?

DID THE POLICE PROVIDE MEDICAL ATTENTION FOR WHO NEED?	FREQUENCY	PERCENT	VALID PERCENT
No	2	1.7	15.4
Yes	11	9.2	84.6
Total	13	10.8	100.0

Table 1.20 Was the last person arrested cooperative?

The cooperative of the person arrested	Frequency	Percent
Very cooperative	11	9.2
Cooperative	43	35.8
Uncooperative	55	45.8
Absolutely uncooperative	11	9.2
Total	120	100.0

The reason for arrest

The reasons	Frequency	Percent	Valid Percent
Less serious offences	17	14.2	48.6
Moderately serious offences	12	10.0	34.3
Very serious offences	6	5.0	17.1
Total	35	29.2	100.0

APPENDIX FIVE:
Results of Questionnaire with Investigation Officers

Table 2.1 What was the age of respondents?

Age of respondent	Frequency	%
19-24	17	14.2
25-29	45	37.5
30-39	44	36.7
40-49	14	11.7
Total	120	100.0

Table 2.2 What the rank of respondents?

The rank of respondent	Frequency	%
Lieutenant	64	53.3
First Lieutenant	41	34.2
Captain	13	10.8
Major	2	1.7
Total	120	100.0

Table 2.3 What is the job of respondents?

Job of the respondent	Frequency	%
Station officers	9	7.5
Investigation officers	102	85.0
Patrol officers	9	7.5
Total	120	100.0

Table 2.4 Did the respondents receive training?

Did the respondents receive training	Frequency	%
No	65	54.2
Yes	55	45.8
Total	120	100.0

Table 2.5 How many times was the last person arrested by the officer interviewed?

times	Frequency	%
1	28	23.3
2	49	40.8
3	37	30.8
4	6	5.0
Total	120	100.0

Table 2.6 Did the suspect receive bail?

Did the suspect receive bail	Frequency	%
No	48	40.0
Yes	72	60.0
Total	120	100.0

Table 2.7 What kind of bail?

Kind of bail	Frequency	%
Conditional	44	36.7
Unconditional	76	63.3
Total	120	100.0

Table 2.8 What are the reasons for bail?

Reasons for bail	Frequency	%
The offence is less serious	87	72.5
The suspect's address is clear	33	27.5
Total	120	100.0

Table 2.9 Police officers should not encourage suspects to take legal advice.

Respondents view	Frequency	%
Strongly agree	23	19.2
Agree	37	30.8
Disagree	40	33.3
Strongly disagree	20	16.7
Total	120	100.0

Table 2.10 The detention period is too short to conduct an investigation properly.

The respondents view	Frequency	Percent
Strongly agree	33	27.5
Agree	48	40.0
Disagree	26	21.7
Strongly disagree	13	10.8
Total	120	100.0

Table 2.11 Is it possible for officers to start interviewing the suspects immediately when they arrive the police station?

Respondents view	Frequency	Percent
Strongly agree	58	48.3
Agree	43	35.8
Disagree	15	12.5
Strongly disagree	4	3.3
Total	120	100.0

Table 2.12 The provision of legal advice disadvantages the police.

Respondents view	Frequency	Percent
Strongly agree	18	15.0
Agree	46	38.3
Disagree	40	33.3
Strongly disagree	16	13.3
Total	120	100.0

Table 2.13 To investigate crime more effectively the police need increased powers of stop and search.

Respondents view	Frequency	Percent
Strongly agree	59	49.2
Agree	33	27.5
Disagree	21	17.5
Strongly disagree	7	5.8
Total	120	100.0

Table 2.14 If the police had greater powers of arrest there would be less crime.

Respondents view	Frequency	Percent
Strongly agree	54	45.0
Agree	36	30.0
Disagree	20	16.7
Strongly disagree	10	8.3
Total	120	100.0

Table 2.15 The provision of appropriate adult for juveniles merely impedes the investigation.

Respondents view	Frequency	Percent
Strongly agree	38	31.7
Agree	38	31.7
Disagree	28	23.3
Strongly disagree	16	13.3
Total	120	100.0

Table 2.16 The right for female suspects to have a Mehram present unnecessarily interferes with the police ability to investigate crime.

Respondents view	Frequency	Percent
Strongly agree	24	20.0
Agree	34	28.3
Disagree	48	40.0
Strongly disagree	14	11.7
Total	120	100.0

Table 2.17 The right to silence interferes with the police ability to investigate crime and should be abolished.

Respondents view	Frequency	Percent
Strongly agree	38	31.7
Agree	38	31.7
Disagree	37	30.8
Strongly disagree	7	5.8
Total	120	100.0

Table 2.18 It is sometimes legitimate for police officers to use coercion to gain a confession.

Respondents view	Frequency	Percent
Strongly agree	7	5.8
Agree	19	15.8
Disagree	58	48.3
Strongly disagree	36	30.0
Total	120	100.0

Table 2.19 Some police officers use trickery and deception to gain confession.

Respondents view	Frequency	Percent
Strongly agree	19	15.8
Agree	53	44.2
Disagree	29	24.2
Strongly disagree	18	15.0
Total	120	100.0

Table 2.20 Suspects have too many rights and police have not enough power.

Respondents view	Frequency	Percent
Strongly agree	39	32.5
Agree	53	44.2
Disagree	21	17.5
Strongly disagree	7	5.8
Total	120	100.0

Table 2.21 The provision of legal advice to suspects interferes the police ability to investigate.

Respondents view	Frequency	Percent
Strongly agree	12	10.0
Agree	38	31.7
Disagree	51	42.5
Strongly disagree	19	15.8
Total	120	100.0

Table 2.22 When the suspects remain silence during police investigation it is obvious that they are guilty.

Respondents view	Frequency	Percent
Strongly agree	12	10.0
Agree	25	20.8
Disagree	65	54.2
Strongly disagree	18	15.0
Total	120	100.0

Table 2.23 Police officers often treat suspects tersely.

Respondents view	Frequency	Percent
Strongly agree	23	19.2
Agree	77	64.2
Disagree	13	10.8
Strongly disagree	7	5.8
Total	120	100.0

Table 2.24 In general police officers try and be friendly towards suspects.

Respondents view	Frequency	Percent
Strongly agree	28	23.3
Agree	79	65.8
Disagree	9	7.5
Strongly disagree	4	3.3
Total	120	100.0

Table 2.25 Suspects deserve to be treated properly because they are innocent until quality.

Respondents view	Frequency	Percent
Strongly agree	56	46.7
Agree	53	44.2
Disagree	7	5.8
Strongly disagree	4	3.3
Total	120	100.0

APPENDIX SIX:**Observation****q1 What was the sex of the suspect?**

The sex of the suspect	Frequency	Percent
Male	88	88.0
Female	12	12.0
Total	100	100.0

q2 What was the nationality of the suspect?

The nationality of the suspect	Frequency	Percent
Saudi	83	83.0
Non-Saudi	17	17.0
Total	100	100.0

q3 What was the suspect age?

The age of the suspect	Frequency	Percent
Under 16	15	15.0
16-24	34	34.0
25-39	35	35.0
40-49	9	9.0
50-59	7	7.0
Total	100	100.0

q6 Did the suspects know why they arrested or charged?

Did the suspect know the accusation	Frequency	Percent
Yes	93	93.0
No	7	7.0
Total	100	100.0

q7 What was the accusation?

The accusation	Frequency	Percent
Less serious offences	49	49.0
Moderately serious offences	46	46.0
Very serious offences	5	5.0
Total	100	100.0

q8 Did the suspect request legal advice?

Did the suspect request legal advice?	Frequency	Percent
Yes	54	54.0
No	46	46.0
Total	100	100.0

q9 Did the suspect receive legal advice?

Did the suspect receive legal advice?	Frequency	Percent
Yes	44	44.0
No	56	56.0
Total	100	100.0

q10 When asked by researcher did the suspect refuse legal advice?

Suspect refused legal advice	Frequency	Percent
Yes	47	47.0
No	53	53.0
Total	100	100.0

q11 What were the reasons given for not requesting legal advice?

Reasons for not requesting legal advice	Frequency	Percent	Valid Percent
Not worth it/ Not required/ not necessary	20	20.0	42.6
because I'm innocent	16	16.0	34.0
because I'm guilty	11	11.0	23.4
Total	47	47.0	100.0

q12 What the type of legal advisor?

Type of legal advisor	Frequency	Percent	Valid Percent
Solicitor	12	12.0	27.3
Accredited representative	32	32.0	72.7
Total	44	44.0	100.0

q13 What the reasons for not having face-to-face contact?

Reasons for not having face-to-face contact	Frequency	Percent	Valid Percent
Being released before an a advisor arrived	10	10.0	31.3
The legal advisor not available	7	7.0	21.9
Changing his or her mind about needing legal advisor	6	6.0	18.8
Agreeing to see a solicitor in court rather than at the stat	9	9.0	28.1
Total	32	32.0	100.0

q14 How the legal advice delivered?

How the legal advisor delivered	Frequency	Percent	Valid Percent
Face-to-face	8	8.0	18.2
By telephone and face-to-face	12	12.0	27.3
Just by telephone	20	20.0	45.5
Via clerk	4	4.0	9.1
Total	44	44.0	100.0

q15 How many consultants did the suspect have with their legal advisor?

Total number of consultants	Frequency	Percent	Valid Percent
once	20	20.0	45.5
twice	14	14.0	31.8
three times	6	6.0	13.6
Four times	4	4.0	9.1
Total	44	44.0	100.0

q16 What are the total length of all consultants?

Total length of all consultants	Frequency	Percent	Valid Percent
10-30 minutes	26	26.0	59.1
31-60	12	12.0	27.3
61-90	6	6.0	13.6
Total	44	44.0	100.0

q17 Did the police provide an appropriate adult for juveniles?

Did the juveniles have an appropriate adult?	Frequency	Percent	Valid Percent
Yes	12	12.0	80.0
No	3	3.0	20.0
Total	15	15.0	100.0

q18 Who was the appropriate adult?

The appropriate adult	Frequency	Percent	Valid Percent
Parents	7	7.0	58.3
Social worker	3	3.0	25.0
Relative	1	1.0	8.3
Other responsible adult	1	1.0	8.3
Total	12	12.0	100.0

q19 If the suspect is female: did the police provide Mehram?

Did the female suspects have a Mehram?	Frequency	Percent	Valid Percent
Yes	11	11.0	91.7
No	1	1.0	8.3
Total	12	12.0	100.0

q20 Who was the Mehram?

Who was the Mehram?	Frequency	Percent	Valid Percent
Husband	5	5.0	45.5
Relative	4	4.0	36.4
Other Mehram	2	2.0	18.2
Total	11	11.0	100.0

q22 Did the suspect need medical attention for mentally disorder or mentally handicapped?

The suspect needs medical attention.	Frequency	Percent	Valid Percent
Yes	11	11.0	11.0
No	89	89.0	89.0
Total	100	100.0	100.0

q23 Did the police provide a medical attention for suspects?

The suspect have medical attention	Frequency	Percent	Valid Percent
Yes	10	10.0	90.9
No	1	1.0	9.1
Total	11	11.0	100.0

q24 What were the reasons given for medical attention?

Reasons for medical attention	Frequency	Percent	Valid Percent
Physical injuries	4	4.0	36.4
Drunkenness	3	3.0	27.3
Mental disorder	3	3.0	27.3
Other illness	1	1.0	9.1
Total	11	11.0	100.0

q25 How long the detention at police station?

The time	Frequency	Percent
Under 12 hours	27	27.0
Over 12 hours but less than 24 hours	30	30.0
24 hours but less than 36 hours	17	17.0
36 hours but less than 48 hours	15	15.0
48 hours or more	11	11.0
Total	100	100.0

q26 Did the suspect think detention place suitable and comfortable?

The detention place suitable and comfortable.	Frequency	Percent
Yes	92	92.0
No	8	8.0
Total	100	100.0

q27 What the frequency of police interviews the suspect?

The frequency	Frequency	Percent
Once	7	7.0
Twice	48	48.0
Three times	37	37.0
Four times	8	8.0
Total	100	100.0

q28 Did the suspect receive legal advice during interview?

The suspect received legal advice during interview.	Frequency	Percent
Yes	18	18.0
No	82	82.0
Total	100	100.0

q29 Was the legal advice present for the whole interviews?

The suspect received legal advice for whole intervew	Frequency	Percent
Yes	17	17.0
No	83	83.0
Total	100	100.0

q30 Did the suspect admit to some or all of the charges during interview?

The suspect admit to the charges	Frequency	Percent
Yes	79	79.0
No	21	21.0
Total	100	100.0

q31 Did the suspect admit to the main charge at any time during interview?

The suspect admit to the main charge	Frequency	Percent
Yes	68	68.0
No	32	32.0
Total	100	100.0

q32 Did the suspects exercise their right to silence?

The suspect exercise their right to silence	Frequency	Percent
Yes	2	2.0
No	98	98.0
Total	100	100.0

q33 Did the suspect refuse to answer all questions?

The suspect refused to answer all questions	Frequency	Percent
Yes	50	50.0
No	50	50.0
Total	100	100.0

q34 Did the police take non-intimate sample from the suspect?

The police took non-intimate samples	Frequency	Percent
Yes	9	9.0
No	91	91.0
Total	100	100.0

q35 Did the police take intimate samples from the suspect?

The police took intimate samples	Frequency	Percent
Yes	11	11.0
No	89	89.0
Total	100	100.0

q36 What were the kinds of samples?

The samples	Frequency	Percent
Blood	65	65.0
Pubic hair	10	10.0
Swab from body orifice	13	13.0
Urine	9	9.0
Other samples	3	3.0
Total	100	100.0

q37 Did the police make an intimate search against the suspect?

The police made intimate search	Frequency	Percent
Yes	29	29.0
No	71	71.0
Total	100	100.0

q38 Did the suspect receive further detention or bail?

Detention or bail	Frequency	Percent
Further detention	28	28.0
Bail	72	72.0
Total	100	100.0

q40 What the reasons for refusing bail?

Reasons for refusing bail	Frequency	Percent
Prevent further offences	10	36
Name or address could not be ascertained	11	39
Risk of failure to appear at court	4	14
For accused's own protection	3	11
Total	28	100

q42 What the reasons for unconditional bail?

Reasons	Frequency	Percent
The offence is less serious	15	78.0
Name and address could be ascertained	6	22.0
Total	21	100.0

q43 What are the reasons for conditional bail?

Reasons	Frequency	Percent
Prevent interference with justice	32	61
Prevent offending on bail	15	27
Prevent failure to appear at court	4	12
Total	51	100.0